

## **TITLE VII**

### **CHILDREN, FAMILIES AND ELDERLY**

#### **Chapter 1. Children**

- Section 7-1-1. Purpose.
- Section 7-1-2. Establishment of Pueblo of Laguna Children's Court.
- Section 7-1-3. Procedures for Laguna Children's Court; general.
- Section 7-1-4. Duty to investigate and report abuse and neglect.
- Section 7-1-5. Children in need of care; emergency procedures.
- Section 7-1-6. Procedures for child in need of care petitions.
- Section 7-1-7. Procedures for guardianship and cessation of parental rights.
- Section 7-1-8. Procedures for transfer of Indian Child Welfare Act cases and recognition of non-Laguna court orders.
- Section 7-1-9. Establishment of parentage and support.
- Section 7-1-10. Emancipation.
- Section 7-1-11. Petitions for rehearing; modification of an order; appeals.
- Section 7-1-12. Local child protection team.

#### **Chapter 2. Juveniles (Child Protection)**

##### **Article I. Child Protection**

###### **Part I. Purpose and Policy**

- Section 7-2-1. Purpose.
- Section 7-2-2. Rights of children within the Pueblo of Laguna.
- Section 7-2-3. Definitions.
- Secs. 7-2-4—7-2-20. Reserved.

###### **Part II. Establishment of Pueblo of Laguna Children's Court**

- Section 7-2-21. Establishment and delegation of authority.
- Section 7-2-22. Jurisdiction of the Children's Court.
- Section 7-2-23. Children's Court Judge.
- Section 7-2-24. Records maintenance and protection: Confidentiality.
- Section 7-2-25. Destruction of records.
- Secs. 7-2-26—7-2-40. Reserved.

###### **Part III. Procedures For Laguna Children's Court—General**

- Section 7-2-41. Application of procedures.
- Section 7-2-42. Payment of fees and expenses.
- Section 7-2-43. Summons.
- Section 7-2-44. Service of summons.
- Section 7-2-45. Investigation; physical and mental examination.
- Section 7-2-46. Conduct of hearings.
- Section 7-2-47. Guardian ad litem.
- Section 7-2-48. Testimony by videotape.
- Section 7-2-49. Informal of nonjudicial resolution.

## PUEBLO OF LAGUNA CODE

Secs. 7-2-50—7-2-60. Reserved.

### Part IV. Duty to Investigate and Report Abuse and Neglect

Section 7-2-61. Basis of investigation and report.

Section 7-2-62. Persons required to report.

Section 7-2-63. Other persons may report.

Section 7-2-64. Anonymity.

Section 7-2-65. Immunity from liability.

Secs. 7-2-66—7-2-80. Reserved.

### Part V. Children in Need of Care—Emergency Procedures

Section 7-2-81. Reports and action on reporting.

Section 7-2-82. Child in need of care—Defined.

Section 7-2-83. Temporary protective care.

Secs. 7-2-84—7-2-100. Reserved.

### Part VI. Procedures For Child in Need of Care Petitions

Section 7-2-101. Court proceedings for a child in need of care.

Section 7-2-102. Ten-day emergency hearing.

Section 7-2-103. Thirty-day review hearing for emergency petitions.

Section 7-2-104. Hearings for nonemergency petitions for a child in need of care.

Section 7-2-105. Ninety-day hearing.

Section 7-2-106. Nine-month review.

Section 7-2-107. Final disposition hearing.

Section 7-2-108. Exceptions to final disposition.

Secs. 7-2-109—7-2-120. Reserved.

### Part VII. Procedures For Guardianship and Cessation of Parental Rights

Section 7-2-121. Duration of suspension or cessation of parental rights.

Section 7-2-122. Preservation of Laguna rights.

Section 7-2-123. Petition for voluntary guardianship.

Section 7-2-124. Adoption.

Secs. 7-2-125—7-2-140. Reserved.

### Part VIII. Procedures For Transfer of Indian Child Welfare Act Cases and Recognition of Non-Laguna Court Orders

Section 7-2-141. Procedures for transfer from state court.

Section 7-2-142. Intervention in other court proceedings.

Section 7-2-143. Notification from other Pueblo of Laguna Courts.

Section 7-2-144. Recognition of other court orders.

Secs. 7-2-145—7-2-160. Reserved.

### Part IX. Establishment of Parentage and Support

Section 7-2-161. Child's right to support.

Section 7-2-162. Establishing parentage.

Section 7-2-163. Proceedings to establish parentage and compel support.

Section 7-2-164. Rights of a child once parentage is established.

Secs. 7-2-165—7-2-180. Reserved.

## CHILDREN, FAMILIES AND ELDERLY

### Part X. Emancipation

- Section 7-2-181. Petition for emancipation.
- Section 7-2-182. Evidence for the determination of emancipated status.
- Section 7-2-183. Notice and procedures.
- Section 7-2-184. Rights of child upon emancipation.
- Secs. 7-2-185—7-2-200. Reserved.

### Part XI. Petitions For Re-Hearing; Modification of an Order; Appeals

- Section 7-2-201. Grounds for re-hearing.
- Section 7-2-202. Modification, revocation or extension of an order.
- Section 7-2-203. Appeals.
- Secs. 7-2-204—7-2-220. Reserved.

### Part XII. Local Child Protection Team

- Section 7-2-221. Establishment.
- Section 7-2-222. Composition of child protection team.
- Section 7-2-223. The child protection team may facilitate provision of services in the following manner.
- Section 7-2-224. CPT meetings.
- Secs. 7-2-225—7-2-240. Reserved.

## Article II. Juvenile Delinquency

### Part I. Jurisdiction of Children's Court in Juvenile Code Matters

- Section 7-2-241. Pueblo of Laguna Children's Court.
- Section 7-2-242. Transfer to Tribal Court from Children's Court.
- Section 7-2-243. Children's Court procedure in Juvenile Code matters.
- Section 7-2-244. Relation with other agencies.
- Secs. 7-2-245—7-2-260. Reserved.

### Part II. Juvenile Code Personnel

- Section 7-2-261. Judge.
- Section 7-2-262. Juvenile probation officer(s).
- Section 7-2-263. Juvenile prosecutor.
- Section 7-2-264. Additional court personnel.
- Secs. 7-2-265—7-2-280. Reserved.

### Part III. Status Offenses

- Section 7-2-281. Status offenses.
- Secs. 7-2-282—7-2-290. Reserved.

### Part IV. Rights of Parties in Juvenile Proceedings

- Section 7-2-291. Enumerated rights of children in juvenile delinquency and adjudicatory proceedings.
- Secs. 7-2-292—7-2-300. Reserved.

### Part V. Juvenile Offender Detainment

- Section 7-2-301. Taking a child into custody.

## PUEBLO OF LAGUNA CODE

- Section 7-2-302. Provision of rights.
- Section 7-2-303. Release or delivery from custody.
- Section 7-2-304. Review by juvenile probation officer or juvenile facility.
- Section 7-2-305. Notification of family.
- Section 7-2-306. Criteria for selecting juvenile facility.
- Secs. 7-2-307—7-2-320. Reserved.

### Part VI. Juvenile Offender—Detention Hearing

- Section 7-2-321. Requirement and purpose of detention hearing.
- Secs. 7-2-322—7-2-330. Reserved.

### Part VII. Juvenile Offender—Initiation of Proceedings

- Section 7-2-331. Investigation by the juvenile probation officer.
- Section 7-2-332. Informal adjustment conference by juvenile probation officer.
- Section 7-2-333. Filing and content of petition by juvenile prosecutor.
- Section 7-2-334. Parental responsibility and jurisdiction over parents, guardian or custodian.
- Section 7-2-335. Issuance of summons.
- Secs. 7-2-336—7-2-350. Reserved.

### Part VIII. Juvenile Offender—Post Petition Consent Decree

- Section 7-2-351. Availability of consent decree.
- Section 7-2-352. Objection to consent decree.
- Section 7-2-353. Duration of consent decree; extension.
- Section 7-2-354. Failure to fulfill terms and conditions.
- Section 7-2-355. New juvenile offense complaint.
- Section 7-2-356. Dismissal of petition.
- Secs. 7-2-357—7-2-370. Reserved.

### Part IX. Juvenile Offender—Adjudication Proceedings

- Section 7-2-371. Purpose and conduct of adjudicatory hearing.
- Section 7-2-372. Time limitations on adjudicatory hearings.
- Section 7-2-373. Notice of hearing.
- Section 7-2-374. Denial of allegations.
- Section 7-2-375. Admission of allegations.
- Section 7-2-376. Juvenile offender finding after admission.
- Section 7-2-377. Juvenile offender finding after hearing.
- Section 7-2-378. Dismissal of petition.
- Secs. 7-2-379—7-2-390. Reserved.

### Part X. Juvenile Offender—Predisposition Studies: Reports and Examinations

- Section 7-2-391. Predisposition study and report.
- Section 7-2-392. Contents of predisposition study and report.
- Section 7-2-393. Medical assessment and treatment for alcohol or substance abuse.
- Section 7-2-394. Pre-adjudication examination of emotionally or developmentally disabled child.
- Section 7-2-395. Predisposition examinations.
- Section 7-2-396. Transfer for diagnosis.
- Section 7-2-397. Submission of reports.
- Secs. 7-2-398—7-2-410. Reserved.

## CHILDREN, FAMILIES AND ELDERLY

### Part XI. Juvenile Offender—Disposition Proceedings

- Section 7-2-411. Purpose and conduct of disposition hearing.
- Section 7-2-412. Time limitations on disposition hearings.
- Section 7-2-413. Notice of disposition hearing.
- Section 7-2-414. Evidence and reports.
- Section 7-2-415. Disposition alternatives.
- Secs. 7-2-416—7-2-430. Reserved.

### Part XII. Juvenile Offender—Review, Modification, Revocation, Extension, or Termination of Dispositional Orders

- Section 7-2-431. Mandatory review of disposition order.
- Section 7-2-432. Modification, revocation or extension of disposition order.
- Section 7-2-433. Hearing to modify, revoke or extend disposition order.
- Section 7-2-434. Automatic termination of disposition order.
- Secs. 7-2-435—7-2-450. Reserved.

### Part XIII. Juvenile Wellness Court; Alternative Sentencing (Reserved)

- Secs. 7-2-451—7-2-470. Reserved.

### Part XIV. Juvenile Records

- Section 7-2-471. Children's Court records.
- Section 7-2-472. Law enforcement records.
- Section 7-2-473. Destruction of records.
- Secs. 7-2-474—7-2-490. Reserved.

### Part XV. Appeals From Decisions Under Juvenile Justice Code

- Section 7-2-491. Who can appeal.
- Section 7-2-492. Time limit for appeal.
- Section 7-2-493. Record.
- Section 7-2-494. Stay of appeal.
- Section 7-2-495. Conduct of proceedings.
- Secs. 7-2-496—7-2-510. Reserved.

### Part VXI. Severability

- Section [7-2-511. Severability.]

## Chapter 3. Mandatory School Attendance

- Section 7-3-1. Policy.
- Section 7-3-2. Purpose.
- Section 7-3-3. Coverage: Who is covered.
- Section 7-3-4. Definitions.
- Section 7-3-5. School attendance mandatory.
- Section 7-3-6. School attendance liaison; duties.
- Section 7-3-7. Pueblo Juvenile Probation Officer; duties.
- Section 7-3-8. Petition to Children's Court for violations by a parent or child.
- Section 7-3-9. Penalties in general; defense; suspension of fine; complaints to court.
- Section 7-3-10. Reports by juvenile probation officer; compilation of information and reports.

## PUEBLO OF LAGUNA CODE

- Section 7-3-11. Confidentiality.
- Section 7-3-12. Use of other proceedings under Pueblo of Laguna law.

### **Chapter 4. Family Protection—Domestic Violence**

- Section 7-4-1. Purpose.
- Section 7-4-2. Policy.
- Section 7-4-3. Severability.
- Section 7-4-4. Jurisdiction territory in domestic violence cases.
- Section 7-4-5. Definitions.
- Section 7-4-6. Written policies and procedures.
- Section 7-4-7. Specific applicability.
- Section 7-4-8. Criminal procedures and penalties.
- Section 7-4-9. Civil orders of protection.
- Section 7-4-10. Stalking.
- Section 7-4-11. Firearms disqualification.

### **Chapter 5. Elderly**

- Section 7-5-1. Policy of the Pueblo of Laguna.
- Section 7-5-2. Purpose.
- Section 7-5-3. Savings clause.
- Section 7-5-4. Civil nature of Code.
- Section 7-5-5. Definitions.
- Section 7-5-6. Duty to report abuse and neglect of an elder.
- Section 7-5-7. Immunity for reporting.
- Section 7-5-8. Failure to report; civil penalty; damages.
- Section 7-5-9. Bad faith report; civil penalty; damages.
- Section 7-5-10. Investigation of reported cases.
- Section 7-5-11. Rights of elders, their families and caretakers.
- Section 7-5-12. Filing of petition; hearing.
- Section 7-5-13. Elder protection order; time limits.
- Section 7-5-14. Elder protective services and elder protective placement; other services, evaluation procedure; duty to pay.
- Section 7-5-15. Emergency protective orders.
- Section 7-5-16. Confidentiality of reporter, records, hearings; penalty for not complying with confidentiality.
- Section 7-5-17. Interference with investigation and retaliation prohibited; civil penalty.
- Section 7-5-18. Privileged communication.
- Section 7-5-19. Referral for criminal investigation.
- Section 7-5-20. Deferring criminal prosecution.
- Section 7-5-21. Full faith and credit.

### **Chapter 6. Domestic Relations**

- Section 7-6-1. Validation of marriages.
- Section 7-6-2. Reserved.
- Section 7-6-3. Marriage.
- Section 7-6-4. Separate maintenance.
- Section 7-6-5. Duties of husband.

## CHILDREN, FAMILIES AND ELDERLY

### **Chapter 7. Probate Proceedings**

Section 7-7-1. Disposition of the assets of a deceased member.

Section 7-7-2. Probate jurisdiction.

Section 7-7-3. Probate procedure.

Section 7-7-4. Heirship.

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**CHAPTER 1. CHILDREN****Section 7-1-1. Purpose.**

The Pueblo of Laguna Council, recognizing that the future of our existence as a people is intricately connected to the safety and welfare of all children in the Pueblo, hereby enacts this chapter to establish policies and procedures to protect the interests of its children, families, the Pueblo and its customs and traditions, laws and culture.

A. *The Pueblo of Laguna Council hereby adopts this chapter in order to implement the following policies with regard to the welfare of children:*

- (1) Protect the best interests of children within the Pueblo of Laguna, prevent the unwarranted breakup of families, maintain the connection of children to their families and Pueblo, and promote the stability and security of the Pueblo by codifying Laguna standards for the conduct of child custody proceedings;
- (2) Foster cooperative intergovernmental relations between the Pueblo of Laguna and the State of New Mexico and other states and Tribes, with regard to the welfare of children and families;
- (3) Preserve and encourage the cultural and spiritual development of children within the Pueblo of Laguna, including support for traditional childraising practices;
- (4) Provide child welfare services to children and families that are in accord with the customs, traditions, laws and cultural values of the Pueblo of Laguna; and
- (5) Preserve and strengthen the child's individual, cultural and Pueblo identity, so that children may become healthy and productive adult members of the Pueblo of Laguna community.

B. *Rights of children within the Pueblo of Laguna.* The Pueblo of Laguna hereby sets forth the following rights of children, bearing in mind the role of children in the family and in the community:

- (1) Every child has the right to be loved and nurtured.
- (2) Every child has the right to preserve and be nurtured in every aspect of, his or her identity, including Tribe, clan, name, family relations, as well as physical, emotional, spiritual and sexual orientation.
- (3) Every child has a right not to be separated from his or her parents or against their will, except when such separation is necessary for the best interests of the child.
- (4) Every child who is capable of forming his or her own views has the right to express those views in matters affecting the child, giving due consideration to the age and maturity of the child.
  - (a) For this purpose, every child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting him or her, either directly, or through a representative or an appropriate body.

- (5) Every child has the right to freedom of association and to freedom of peaceful assembly, subject to restrictions which are necessary for public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.
- (6) Every child of working parents has the right to benefit from child care services and facilities for which he or she is eligible.
- (7) Every child has the right to be protected from all forms of physical and verbal, or mental and emotional violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse and sexual exploitation.
- (8) Every child, including the mentally, emotionally or physically challenged child, should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
- (9) Every child has the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.
- (10) Every child has the right to education directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.
- (11) Every child has the right to be educated by the community, to enjoy his or her own culture, to profess and practice his or her own religion, and to use his or her own language.
- (12) Every child has the right to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate in cultural life.
- (13) Every child has the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, emotional, spiritual, moral or social development.
- (14) Every child has the right to be raised in an environment free of drug and alcohol abuse.
  - (a) Every child has the right to be protected from the abuse and illegal use of drugs, alcohol and tobacco, as well as mood altering and physically harmful substances.
  - (b) Every child has the right to be protected from being used in the illicit production and trafficking of such substances.
- (15) No child shall be subjected to cruel, inhuman or degrading treatment or punishment.
  - (a) The detention of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.
  - (b) Every child lawfully detained shall be treated with humanity and respect, and in a manner which takes into account the needs of persons of his or her age.

- (16) Every child alleged as, accused of, or recognized as having infringed Laguna laws, regulations or customs has the right to be treated with dignity, while encouraging the child's respect for others, taking into account the child's age, and the desirability of promoting the child's reintegration and taking a constructive role in the community.
- (17) The exercise of these rights may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary. The Pueblo of Laguna shall respect and support the rights and duties of the parents, grandparents, custodians or legal guardians, to provide direction and nurturing to the child in the exercise of his or her right, in a manner consistent with the evolving capacities of the child.

C. *Definitions.*

- (1) Terms under this chapter are to be interpreted in a broad fashion designed to encourage the jurisdiction of the children's court over children who come under this chapter, and to facilitate the authority of the Pueblo of Laguna Children's Court to act to protect the interests of Laguna children and families.
- (2) The terms in this subsection shall be interpreted in light of Pueblo of Laguna laws, customs and traditional child-rearing practices. Terms not specifically defined in this chapter shall be defined according to their normal usage.

*Abandonment* means the failure of the parent, guardian or custodian to provide support and to maintain contact with a child. Custody with extended family members through mutual consent to placement does not constitute abandonment.

*Abuse* means the infliction of physical, emotional or mental injury on a child, or sexual abuse or sexual exploitation of a child, including failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his health, moods or emotional well-being is endangered.

*Active efforts* means actions taken to engage affected families in activities and services designed to keep the family intact.

*Adult* means an individual who is eighteen (18) years of age or older, or a child emancipated by order of a children's court of competent jurisdiction.

*Advocate* means a nonlawyer who is authorized to practice before the Laguna Courts.

*Best interests of the child* means the preservation of the connection, or the creation of such a connection if one does not currently exist, between a Pueblo of Laguna child and his or her family, culture, or the Pueblo in a setting that is stable, secure, safe, healthy and emotionally, spiritually, socially, and intellectually enriching, and in which the special needs of that child may be met.

*Cessation of parental rights* means the permanent cancellation of the legal relationship between parent and child.

*Child* means an individual who is less than eighteen (18) years old.

*Court* means the Pueblo of Laguna Children's Court unless otherwise specified.

*Court appointed special advocate (CASA)* means an advocate who is trained under the CASA program and is appointed by a presiding judge, on behalf of a child, to provide the court with independent information on the case.

*Custodian* means a person, other than a parent or guardian, who exercises physical control, care or custody of the child, including any employee of a residential facility or any persons providing out-of-home care.

*Domicile* means a person's permanent home, legal home or main residence. The domicile of a child is generally that of the parent, custodian or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home.

*Expert witness* means a person who is:

- (i) A member of the Laguna or other Indian community who is an acknowledged expert on the cultural or spiritual traditions of the child's Tribe;
- (ii) A professional person having a recognized education in medical, social, spiritual or other fields which the court may determine relevant in child custody proceedings and who has special expertise in Indian culture.

*Extended family* means any person related by blood or marriage to the child having significant contacts with the child and who is viewed as an extended family member in accordance with the customs of the Pueblo of Laguna or the child's Tribe, including the grandparents of a child.

*Foster care* means the placement of a child outside of his or her home, to reside with another family or person for a specified period of time.

*Guardian* means a person other than the child's parent who is by law responsible for the care and custody of that child or his or her estate, or both.

*Guardian ad litem* means a person appointed by the children's court to represent and protect the legal rights and interests of the child in a children's court proceeding.

*Indian* means any member of a federally recognized Indian Tribe, band or community, or an Alaska Native who is a member of a regional corporation as defined in 43 U.S.C. section 1606, or a person considered by the Pueblo of Laguna to be Indian.

*Legal custody* means the right and responsibility to mental, emotional and physical care, custody and control of a child who has been taken by the court in accordance with the provisions of this chapter.

*Next of friend* means any individual who a party requests to participate in any proceeding who is not a paid attorney or advocate.

*Parent* includes natural or adoptive parents but does not include persons whose parental rights have ceased pursuant to order of the children's court, nor does it include the unwed father whose paternity has not been acknowledged or adjudicated.

*Residence* means the place where the child is presently living.

*Shelter care* means the residential care of children in a shelter care facility or group home approved by the Pueblo of Laguna Social Services or Family Services.

*Social services* means the Department of Social Services of the Pueblo of Laguna.

*Suspension of parental rights* means the temporary or indefinite severance of the legal relationship between parent and child.

#### **Section 7-1-2. Establishment of Pueblo of Laguna Children's Court.**

A. *Establishment and delegation of authority.* There is hereby established for the Pueblo of Laguna a court to be known as the Pueblo of Laguna Children's Court. The primary function of the children's court shall be to foster the well-being of all children within the Pueblo of Laguna. Its jurisdiction shall be abuse, neglect and dependency in nature and it shall possess the authority to issue all orders necessary to insure the safety and well-being of children who have been declared to be wards of the children's court.

B. *Jurisdiction of the children's court.* The children's court shall have jurisdiction over all children within the exterior bounds of the Pueblo of Laguna, children of Pueblo of Laguna members pursuant to the Indian Child Welfare Act, 25 U.S.C. sections 1901—1963, and children by the consent of the parties with custody of such children.

- (1) The Pueblo of Laguna Children's Court shall have original exclusive jurisdiction over all matters relating to:
  - (a) Any child who is suspected of being abused, neglected or dependent.
  - (b) Any child whose behavior is injurious to his or her own welfare or to the welfare of others.
  - (c) Any child who is beyond the control of his or her parent, custodian or school authorities.
  - (d) The custody of any child or the guardianship of any child who comes within the purview of the court's jurisdiction under the other provisions of this chapter.
  - (e) Proceedings for the adoption of a child.
  - (f) Cessation of legal parent-child relationship, including residual parental rights and duties.
  - (g) Emergency medical or surgical treatment of a child.

- (h) The treatment or commitment of a mentally defective, mentally ill child or any child who exhibits a deviant behavior pattern who comes within the purview of the court's jurisdiction under other provisions of this chapter.
- (2) Jurisdiction of Indian Child Welfare Act proceedings. The Pueblo of Laguna Children's Court may also exercise jurisdiction over child custody proceedings by transferring state proceedings, pursuant to the Indian Child Welfare Act ("ICWA") (Public Law 95-608), 25 U.S.C. sections 1901—1963, and the rules and regulations promulgated by the Secretary of the Interior in Title 25, C.F.R. Parts 13 and 23, where they do not conflict with the provisions of the Pueblo of Laguna Law and Order Code. The procedures for state courts in the ICWA shall not be binding upon the Pueblo of Laguna Children's Court except where specifically provided in this chapter.
- (3) Transfer to state court or other Pueblo Court. In any proceeding before the children's court, the court may transfer the proceedings to an appropriate state court or another Pueblo Court where the children's court determines that the state or other Indian Nation has a significant interest in the child and the transfer would be in the best interests of the child.
- (4) Transfer from other court. The children's court may accept or decline, under the procedures set forth in this chapter, transfers of child welfare cases from federal, international, state and Pueblo Courts.
- (5) Notwithstanding anything in this Code, the children's court shall not have exclusive jurisdiction over matters relating to children who engage in behavior that would otherwise constitute a violation of the Pueblo of Laguna Law and Order Code. Such cases may be adjudicated in the Tribal Courts of the Pueblo of Laguna pursuant to the Law and Order Code subject the child to the Criminal Procedures Code and any other pertinent Pueblo of Laguna laws, processes and procedures.
- (6) Continuing jurisdiction. The children's court may exercise continuing jurisdiction to further the best interest of children and their extended families who, while subject to the children's court jurisdiction under section 7-1-2, leave the Reservation.
- (7) Jurisdiction over extended family.
  - (a) Where the children's court exercises exclusive jurisdiction over a child under subsection 7-1-2B. above, the court shall also have civil jurisdiction over the child's extended family residing in the household whenever the court deems it appropriate.
  - (b) The children's court shall have jurisdiction over any adult whose behavior causes or tends to cause the child to come within the jurisdiction of the court. Such person shall be provided notice and opportunity for hearing.
- (8) Comity. The court shall exercise comity with regard to state and Pueblo child custody orders, where such orders are consistent with the public policy of the Pueblo, the intent of the Indian Child Welfare Act, due process, and the laws and customs of the Pueblo of Laguna.

*C. Children's court judge.*

- (1) *Appointment.* A children's court judge shall be appointed in the same manner as other Pueblo of Laguna Court Judges.
- (2) *Qualifications.* The general qualifications for a children's court judge shall be the same required under the judges' chapter. In appointing a children's court judge, the Pueblo Council may consider the following areas of responsibility:
  - (a) The Indian Child Welfare Act of 1978;
  - (b) Both the human services and justice system contexts;
  - (c) The ethical dilemmas, pretrial preparation, hearing related issues, and underlying child development and parental bonding, child protection and permanency planning principles;
  - (d) Child welfare agencies that are caregivers to children; and
  - (e) State and Pueblo Child Protection Systems.
- (3) *Powers and duties.* In order to implement this chapter, the children's court judge shall have the same duties and powers as a judge of the Laguna Pueblo Court, including, but not limited to, contempt powers, the power to issue subpoenas and warrants and the power to conduct inquiries in child protection matters.

*D. Records maintenance and protection; confidentiality.*

- (1) *Children's court records.* A record of all hearings under this chapter shall be made and preserved until the jurisdiction of the children's court has terminated or until the child is eighteen (18) or emancipated, whichever comes first in time.
- (2) *Confidentiality.* All children's court files, documents, or other material associated with a child custody proceeding governed by this chapter shall be kept confidential, unless ordered released by order of the children's court. Such records shall not be open to inspection other than by children's court personnel or by any person except for the following:
  - (a) The child and his or her attorneys;
  - (b) The child's parent, guardian or custodian and his or her attorney;
  - (c) Laguna Social Services and the attorney or advocate representing the child;
  - (d) The presenting officer; or
  - (e) Any other person the children's court determines has a valid reason to see such records and who is issued a written order detailing the reasons for permitting such person to review such records.
- (3) This section applies to the release of the names of children, families or witnesses involved in proceedings under this chapter.

- (4) Disclosure of documents and material to authorized public agencies, whether the Pueblo of Laguna, federal or state, in the performance of the official duties of those agencies shall not violate this section.
- (5) All records included within this section shall be kept in a secure place by the children's court clerk, and shall be released only pursuant to procedures developed by the judge of the children's court. No other release of information shall be permitted without an order of the children's court.
- (6) Each person who inspects a child's record shall be required to sign a written oath pledging to maintain the confidentiality of the records. Failure to abide by this pledge shall constitute contempt of children's court.

E. *Destruction of records.* All records of the child shall be destroyed when the child is no longer subject to the children's courts jurisdiction, except those records involving adoption, neglect, abandonment, or abuse of a child shall not be destroyed and shall remain sealed until further order of the children's court.

**Section 7-1-3. Procedures for Laguna Children's Court; general.**

The following procedures shall apply to all proceedings under the jurisdiction of the children's court, except where supplemented as indicated in this chapter.

- A. *Payment of fees and expenses.* There shall be a fee for filing a petition under this chapter in all matters except a petition for a child in need of care filed by social services. In such a case, fees and expenses, cost of publication of summons, and the expenses of a trial, when approved by the children's court, shall be paid by the Pueblo of Laguna.
- B. *Summons.*
  - (1) After a petition has been filed, unless the parties hereinafter named voluntarily appear, the children's court shall set a time and place for the hearing, and shall issue a summons to the parents, guardian, spouse, other interested parties, or other persons having custody or control of the child, stating that they are to appear with the child before the children's court at the time and place as set forth in the summons.
  - (2) The children's court may issue a subpoena requiring the appearance of any person(s) it deems necessary.
- C. *Service of summons.*
  - (1) The summons shall be served by personal service or by regular mail at least five (5) working days prior to the time of the hearing.
  - (2) If any person served with a summons or subpoena fails, without reasonable cause, to appear or bring the child, the children's court may proceed against him or her for contempt of children's court, or the children's court may issue a warrant for his or her arrest, or both. In any case when it appears to the children's court



that the service will be ineffectual or that the welfare of the child requires that he or she be brought into the custody of the children's court, the children's court may issue a summons for the child.

- (3) If it appears from the petition or by separate affidavit of a person having knowledge of the facts that the child is in a situation that his or her welfare requires that his or her custody be immediately assumed by the children's court, the children's court may order, by endorsement upon the summons, that the officer serving the summons take the child into custody at once.

D. *Investigation; physical and mental examination.*

- (1) Upon request of the children's court, Laguna Social Services shall investigate the personal and family history and environment of any child coming within the jurisdiction of the children's court and file a report of its findings with the children's court. The children's court may order any child coming within its jurisdiction to be examined by a duly qualified physician, psychiatrist or psychologist appointed by the children's court, in order that the physical, mental and emotional condition of the child be given due consideration in the disposition of the case.
- (2) If for any reason, such as religious beliefs, the child, parent, custodian or guardian of the child objects to a physical and/or mental examination of the child as provided above, a hearing shall be conducted to determine the validity of the objection and the children's court shall readjust its order accordingly.

E. *Conduct of hearings.*

- (1) Hearings shall be conducted without a jury and may be conducted in an informal manner. Hearings may be continued or recessed from time to time and, in the interim, the children's court may take such action and issue such orders as it deems in the best interests of the child. The children's court shall exclude the general public from these hearings and shall admit only those persons, who, in the discretion of the children's court, have a direct interest in the case or in the work of the children's court.
- (2) The child, parent, guardian or custodian have the right to be represented by an advocate, next of friend, or attorney at their own expense. They are also entitled to be heard, to present evidence material to the case and to confront and cross-examine witnesses appearing at the hearing. In addition, the court may appoint a court appointed special advocate (CASA).
- (3) The children's court may waive the presence of the child in court at any stage of the proceedings when it is in the best interest of the child to do so. In any proceeding, the children's court may temporarily excuse the presence of the parent or guardian of the child when it is in the best interest of the child to do so.

The lay counsel, professional attorney or guardian ad litem, if any, has the right to continue to participate in any proceeding during the absence of the child, parent or guardian.

- (4) Where questions of Laguna tradition or customary law arise, the court may seek the assistance of Laguna traditional leaders, elders in the community and other community members knowledgeable in Laguna tradition and custom. Parties may seek the assistance of such experts at their own expense as well.

F. *Guardian ad litem.*

- (1) At any stage of the proceedings conducted under this chapter, the court may appoint counsel for the child to act as guardian ad litem representing the child's best interest, without affecting the right of counsel of the parents, guardians or other legal custodians.
- (2) A guardian ad litem acts as a quasi-judicial officer of the court and shall be guided by the best interests of the child and exercise independent judgment on behalf of the child in all relevant matters.
- (3) With the children's court judge's written authorization, the guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or any person and shall have access to all relevant records of such agencies or persons relating to the child or the child's family members of placements of the child.
- (4) Compensation may be provided to every guardian ad litem appointed, at a rate to be determined by the children's court.

G. *Testimony by videotape.* At the discretion of the children's court, and where necessary to protect the best interests of the child, the children's court may permit a child to testify by videotape, or take other steps necessary to protect the child in proceedings under this chapter.

H. *Informal or nonjudicial resolution.*

- (1) In order to support the policy of keeping families together, it shall be the duty of Laguna Social Services, Attorneys, Advocates, and the Children's Court to encourage satisfactory, out-of-court solutions to cases under this chapter prior to a final disposition hearing.
- (2) Request. Any party to a proceeding may request an informal or nonjudicial resolution. The request may be made at any time after the filing of a petition, up to the court's issuance of an order following the final disposition hearing.
- (3) Referral by court. The court in its discretion may refer the matter to village staff or appropriate Laguna Pueblo officials for resolution. In cases where a child has been removed from home the court shall make an initial referral of thirty (30) days to appropriate Pueblo officials and may extend this request for good cause if necessary. Pueblo officials to whom the case is referred will be asked to provide

periodic reports if the time lines provided below in ssection 7-1-6 "Procedures for children in need of care petitions", are affected where a child is removed from a home. In no event shall a referral exceed six (6) months.

- (4) Any disposition of a case pursuant to such informal or nonjudicial resolution must be voluntarily agreed to by all parties to the proceedings. Upon agreement by all parties, the court shall enter a conference agreement and this shall have the effect of a court order. The agreement may include, but is not limited to the following dispositions:
  - (a) Release of the child to the parent or custodian with no further action, and dismiss case;
  - (b) Suspend the proceedings for a specified time, releasing the child, the parent, custodian, or other person as the court may direct, with appropriate remedial conditions;
  - (c) Order final disposition of the case, consistent with the provisions for an order following final disposition hearing.
- (5) Informal or nonjudicial resolution of a matter under the children's court shall not in any way preclude the filing of criminal charges if a crime has been committed by a party in a proceeding.

#### **Section 7-1-4. Duty to investigate and report abuse and neglect.**

A. *Basis of investigation and report.* Persons who have a reasonable cause to suspect that a child has been abused or neglected shall report the suspected abuse or neglect to a Laguna agency responsible for investigating allegations of abuse or neglect. Laguna Social Services and/or the Laguna Police Department shall immediately investigate all allegations of abuse, abandonment and neglect, and if appropriate, proceed according to the provisions of this chapter.

B. *Persons required to report.* Those persons required to report suspected abuse or neglect include any physician, nurse, dentist, optometrist or any medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel; counselor; peace officer or other law enforcement official; judge, attorney, children's court counselor, clerk of the children's court or other judicial system official. Each agency shall develop its own guidelines with regard to the duty of volunteers to report suspected abuse or neglect to supervisors.

C. *Other persons may report.* Any person may make a report of suspected abuse or neglect to Laguna Social Services or Laguna Police Department.

D. *Anonymity.* Any information regarding the source of a report of a child in need of care will be kept confidential. Such reports shall not be admissible in evidence in any proceeding under this chapter. Information contained in such reports shall not be admissible in any civil proceeding under this chapter unless the reporter is voluntarily and personally present at the proceeding and testifies to personal knowledge of such information.

E. *Immunity from liability.* All persons or agencies reporting in good faith, known or suspected instances of abuse or neglect, are immune from civil liability and criminal prosecution.

**Section 7-1-5. Children in need of care; emergency procedures.**

A. *Reports and action on reporting.* Upon the receipt of a report or information regarding a child who may be a child in need of care, as defined by subsection 7-1-5B., from Laguna Police Department or any other Laguna agency, Laguna Social Services shall investigate or cause to be investigated the circumstances surrounding the report, including the home environment of the child, a safety and risk assessment, any physical or emotional injuries suffered by the child, and all other matters which, in the discretion of Laguna Social Services and Laguna Police Department, shall be relevant to the investigation.

- (1) If from the investigation it appears that there is reasonable grounds to believe that the child is a child in need of care, social services shall prepare a summary of the investigation for further action.
- (2) If from the investigation it appears that the child is in need of emergency protective care as set forth in subsection 7-1-5C., social services, with the assistance of the Laguna Police Department, if necessary, shall provide such emergency protective services.

B. *Child in need of care: Definitions.* A child in need of care means a child who has been found to be in one (1) or more of the following situations:

- (1) *An abused child.* One who has suffered or is likely to suffer a physical injury, inflicted upon the child by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or serious physical or emotional harm, as determined by appropriate medical or professional personnel. The following are examples of circumstances in which a child could be found to be an abused child, but as such are not intended to be all-inclusive:
  - (a) A child who has been beaten or suffered other unusual or inappropriate corporal punishment.
  - (b) A child who suffers injury to his or her psychological functioning, as determined by an appropriate professional person, as a result of psychological or other abuse.
  - (c) A child who has been subjected to obscene or indecent sexual activities as a result of pressure, guidance, or approval of the child's parent or custodian.
  - (d) A child who has been a passenger in a vehicle driven by an intoxicated person, with the knowledge or approval of the child's parent or custodian.
- (2) *A neglected child.* One whose parent or custodian fails to provide such food, clothing, shelter, medical attention, hygiene, education, or supervision as the child needs for development, although the parent or custodian was able to furnish such needs or has

refused Laguna or other assistance for furnishing such needs, and such failure is likely to result in significant harm to the child's health or welfare, as determined by appropriate medical or professional persons.

- (3) *A dependent child.* One who fits one (1) of the following categories:
- (a) Who is without a parent, guardian, extended family or other custodian;
  - (b) Who is without parental care and supervision because he or she has been abandoned;
  - (c) Who is in need of special care and treatment required by his or her physical, mental or social condition; or
  - (d) Whose parent, guardian, extended family or other custodian for good cause requests support with care and custody of the child.
- (4) Nothing in these definitions shall be used to interfere with or prohibit the cultural and spiritual development and with traditional child raising practices of the child's family or Tribe.

*C. Temporary protective care.*

- (1) **Authorization and duties of Laguna Police.** A Laguna Police Officer may take a child into temporary protective care under the following conditions:
- (a) Whenever a Laguna Police Officer has reasonable grounds to believe that a child is in danger of serious and imminent physical or emotional harm and that the removal of the child from the child's home residence is necessary to avoid harm, and if the court is unavailable to issue a custody order, or if the issuance of a custody order would involve a delay that would contribute to the risk of harm to the child.
  - (b) Whenever a Laguna Police Officer has reasonable grounds to believe that a child, subject to a custody order issued by the Laguna Children's Court, is leaving the jurisdiction of the children's court or being taken from this jurisdiction without permission of his or her custodian.
- (2) **Procedure upon removal of a child.** Upon the removal of a child into temporary protective care, the Laguna Police Officer shall take the following steps:
- (a) *Notification.*
    - (i) Immediately notify the child's parents or custodian of such removal, and the reasons therefore. If such attempts to notify the child's parents or custodian are unsuccessful, then best efforts shall immediately be made to notify the child's nearest relatives.
    - (ii) Immediately notify the social services personnel designated to take such notice of such removal.

(b) *Placement of child.*

- (i) If return of physical custody of the child can be accomplished without danger of harm to the child, the child shall be returned to the parents or custodian.
- (ii) If the return of the child to the child's parents or custodian is impossible or would involve continued risk of such harm to the child, then the child shall be placed in the physical custody of a responsible adult member of the child's extended family, if available and if placement can be accomplished without risk of harm to the child.
- (iii) If temporary protective care as set forth above is not available, then the child shall be placed with a secure home, family, or shelter care facility having been approved for such placement by Laguna Social Services.
- (iv) A child shall not be placed in a detention facility or other environment where the child is in contact with persons in such a facility for the reason of having been accused or convicted of a crime or delinquent act, unless such a placement is determined, by a children's court judge, to be necessary for the benefit of the child or to insure the child's continued presence in the area.

(c) *Emergency medical care.* In the event that the police officer and social services determine that the child is in need of emergency medical attention, the police officer or social services personnel may contact Laguna Emergency Medical Services and/or deliver the child to a medical treatment center.

(d) *Written report to social services.* Upon the placement of the child, the Laguna Police Officer shall make and deliver a report to social services, within eight (8) hours, containing a summary of the circumstances surrounding the temporary protective care and the basis for it.

(3) Laguna Police Department and Social Services shall further specify coordination of these procedures in an interdepartmental agreement.

(4) Termination of temporary protective care. In no case shall temporary protective care extend beyond forty-eight (48) hours or two (2) working days, exclusive of weekends and holidays. At the expiration of this period, Laguna Social Services shall:

- (a) Return the child to the child's parents or custodian; or
- (b) Bring the child before a children's court judge with a petition and affidavit requesting emergency care and control of the child as provided in subsection 7-1-6E.

**Section 7-1-6. Procedures for child in need of care petitions.**

A. *Petition.* All court proceedings under this chapter shall be initiated by a petition prepared and filed by Laguna Social Services. The petition shall contain the following information:

- (1) The name and birth date of the child;

- (2) The name of the parents or custodian of the child;
- (3) The basis of the court's jurisdiction;
- (4) An allegation that the child is a child in need of care, and a plain statement of facts supporting this allegation;
- (5) Any facts relevant to the present physical or legal custody of the child;
- (6) A summary of any efforts which have been made by Laguna Social Services or others to divert the case from the court system to extended family, community leaders or advisors;
- (7) Whether temporary custody of the child is requested by Laguna Social Services;
- (8) A statement of any other relief requested by Laguna Social Services, including cessation of any parental or custodian rights or appointment of a substitute custodian.

B. *Notice.* Written notice of any hearing, except a ten-day hearing, held under this chapter shall be given, at least five (5) days prior to the hearing date, to all parents or legal custodians of the child, and to other persons as the court may direct. A copy of the petition shall also be served no later than five (5) days prior to the hearing, by the court.

C. *Rules.* Rules of procedure and evidence, and burdens of proof, shall be as set forth in the rules of procedure for Laguna Courts, except where indicated in this chapter.

D. *Intervention.* Intervention into the proceedings shall be allowed as follows:

- (1) Any extended family member may submit a motion to the court, requesting permission to intervene as an interested party. Motions will be granted or denied at the discretion of the judge. Extended family members may also present themselves to the court and state why they wish to participate as interested parties. The court shall make a determination based on the best interests of the child.
- (2) Upon motion, in writing or orally, community counselors, spiritual leaders, and other persons may be allowed to intervene as interested parties at the discretion of the court. Such persons must file a motion or present themselves to the court and state why they should be allowed to participate as interested parties. Where applicable, the court shall follow Laguna or other applicable traditions and customs regarding the involvement of such interested persons.
- (3) Notice of intervention shall be served by mail, by the clerk of the court, upon all parties to the proceedings at least five (5) days prior to the hearing. Such notice may be excused by the court if the court determines that lack of notice has not detrimentally affected the other parties. If the court finds such detrimental effect, the court may:
  - (a) Deny intervention; or
  - (b) Continue the hearing date for an appropriate time.

*E. Ten-day emergency hearing.*

- (1) When Laguna Social Services files a petition for care and control within forty-eight (48) hours after a child is taken into temporary protective care, and an order is granted, the children's court shall set a hearing for no later than ten (10) days after Laguna Social Services files such petition. The purpose of the hearing shall be to determine whether an out of home placement should continue.
- (2) Laguna Social Services shall use best efforts to notify the child's parents or custodian of the time and place of the hearing, and inform the parents or custodian of their right to attend the hearing and be heard.
- (3) The parents or custodians of the child shall be advised of:
  - (a) The nature of the allegations;
  - (b) The factual basis for the allegations;
  - (c) The present custodial situation;
  - (d) The relief requested by Laguna Social Services;
  - (e) The right to be represented by legal counsel at their own expense and the right to request a Laguna advocate appointed at their expense or at the Pueblo's expense if the parent or custodian cannot afford representation and if an advocate is available;
  - (f) The right to request an informal resolution of the proceeding. If an informal resolution is requested and consent is given in accordance with subsection 7-1-3H., the court may suspend further proceeding pending the informal resolution.
- (4) At the time of the hearing, the court shall determine the appropriateness of placement of the child pending further proceedings, and may appoint a guardian ad litem for the child.
- (5) The hearing shall be informal in nature. The parent or custodian will be allowed to admit or deny the allegations in the petition. Parties may present evidence relating to the situation. The court shall make its determination based solely on the evidence and arguments presented at this hearing.
- (6) Unless the allegations are admitted, social services shall have the burden of proving, by clear and convincing evidence, that the child is a child in need of care.
- (7) If temporary custody is requested, Laguna Social Services shall have the burden of proving, by clear and convincing evidence, that such relief is necessary for the protection of the child.
- (8) Upon the conclusion of the hearing, the court shall issue a temporary order, including the following:
  - (a) Its jurisdiction over the case;



- (b) Whether it has been proven that the child is a child in need of care. If the court does not so find, the petition will be dismissed;
  - (c) If temporary custody is requested, whether such custody is necessary for the protection of the child. If the court does not so find, the custody of the child shall remain with or be returned to the parent or custodian;
  - (d) A child who is determined by the court to be a child in need of care under section 7-1-5 may be adjudicated to be a ward of the court.
- (9) In addition, the order may direct:
- (a) That notice of the proceedings be given to additional interested parties;
  - (b) That the child, parents or custodians undergo medical or psychological examinations or other related evaluations and that reports be submitted to the court;
  - (c) That further investigation be conducted by social services or other agencies;
  - (d) That the family or the child participate in such counseling, advice or other program as the court may deem beneficial; and
  - (e) That such other actions consistent with the purposes of this chapter be taken.

*F. Thirty-day review hearing for emergency petitions.*

- (1) No later than thirty (30) days after a petition for child in need of care is filed, the children's court shall hold a review hearing to assess the needs of the child and the child's family. All parties will be given an opportunity to make recommendations regarding the best interests and placement of the child.
- (2) The purpose of the thirty-day review hearing shall be to assess whether continuing court intervention is necessary to protect the well-being of the child.
- (3) The court shall follow the same procedures for noticing the hearing, informing the parties of their rights and admitting evidence as those provided for in a ten-day emergency hearing, in subsections 7-1-6B. and C.
- (4) If the court determines that it should retain jurisdiction over the child it shall issue a written order addressing the applicable issues set forth in subsections 7-1-6E.(8) and (9), and shall adjudge the child a ward of the court.
  - (a) If the court finds that the child should not be returned to the home, the court shall issue a written order that continued removal from the home is in the best interests of the child and that either active efforts have been made to reunite the child and family or that the plan is for the child not to return home until further court order. The court must address the active efforts made to prevent or eliminate the continued need for removal.
  - (b) The court shall specify in its order the necessary intervention and appropriate steps, if any, which the parent, guardian or custodian must follow to correct the underlying problem.

*G. Hearings for nonemergency petitions for a child in need of care.*

- (1) Where a nonemergency petition for a child in need of care is filed by social services, the children's court shall set an initial hearing no later than thirty (30) days after the petition is filed.
- (2) The petition filed by social services shall contain the same information as that provided in subsection 7-1-6A.
- (3) Notice, court procedures, burdens of proof, and the manner in which an order is issued shall be the same as that provided for in a thirty-day hearing in subsection F. of this section.

*H. Ninety-day hearing.*

- (1) Within ninety (90) days after a petition, emergency or nonemergency, is filed by Laguna Social Services, the children's court shall hold a dispositional hearing.
- (2) The court shall inquire into the compliance with any temporary order issued by the court, including remedial conditions, and make any necessary dispositions.
- (3) Notice of the ninety-day dispositional hearing shall be given in accordance with subsection 7-1-6B. All interested parties may testify, and otherwise give evidence in their behalf regarding the present circumstances of the child and of the parents, custodians or possible custodians of the children.

*I. Nine-month review.*

- (1) Within six (6) months after the ninety-day dispositional hearing, the children's court shall hold a review hearing to determine whether any progress has been made by the parents, extended family and/or custodians.
- (2) Notice of the nine-month review shall be given in accordance with subsection 7-1-6B.
- (3) The court shall issue an order setting out the findings regarding any progress by the parents, extended family and/or custodians, and make any necessary dispositions.

*J. Final disposition hearing.*

- (1) No later than twelve (12) months, and earlier where possible, after a petition is filed, a final disposition hearing shall be held.
- (2) Notice of the final disposition hearing shall be given in accordance with subsection 7-1-6A. All interested parties may testify, and otherwise give evidence in their behalf regarding the present circumstances of the child and of the parents, custodians, or possible custodians of the children. The court shall inquire into the compliance with any orders issued by the court, including remedial conditions.

- (3) The court may order any of the dispositional alternatives permissible under temporary dispositional orders or informal resolution orders. In addition, the court may order any of the following dispositions:
  - (a) Temporarily suspending parental rights for a specified period of time, placing the child's legal custody for such period with Laguna Social Services and the physical custody of the child with an extended family member, foster home, shelter-care home, or other appropriate person or facility.
  - (b) Suspending parental rights for an indefinite period of time, placing legal custody of the child with Laguna Social Services, and the physical custody of the child, as set forth in subsection (3)(a), directly above.
  - (c) Cessation of parental rights, and placing the child with an appropriate custodian. Where practicable, the custodian shall be an extended family member of the child or a member of the child's community.
- (4) In any of the above situations set forth in subsections (3)(a)—(c), above, where there has been a suspension or cessation of parental rights, but the child has not been adopted, the child shall be considered a protected child of the Pueblo of Laguna or ward of court.
- (5) In the event that parental rights have been suspended indefinitely, the court shall order a review of the case every six (6) months to determine whether any progress has been made by the parents.
- (6) No suspension or cessation of parental rights may be ordered unless the court determines, by clear and convincing evidence, that the continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage to the child. No cessation of parental rights may be ordered unless, in addition, the court determines that the risk of serious emotional or physical damage to the child will continue due to circumstances that are irremediable by further efforts of the court and Laguna Social Services.
- (7) If the court orders a cessation of parental rights, the court makes the following statements and determinations:
  - (a) That the court has considered the question of inheritance and that the inheritance rights of the child shall be continued, with such conditions as the court may place.
  - (b) That the court has considered the question of residual rights and determines:
    - (i) That the court will effect a cessation of all the natural parents' rights to the child; or
    - (ii) That the natural parent(s) may enjoy certain residual parental rights, which may include the following:
      - (A) The right to communication;
      - (B) The right to visitation;

- (C) The right or obligation to contribute to support or education;
  - (D) The right to be consulted regarding the child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; or
  - (E) Such other residual rights as the court may deem appropriate, considering the circumstances.
- (8) The court may grant similar residual rights to extended family members upon the cessation of parental rights.
- (9) Nothing in this chapter shall prohibit a parent from petitioning the children's court to restore certain residual parental rights where the court has ordered a cessation of parental rights.

*K. Exceptions to final disposition.*

- (1) In exceptional cases, where the court is convinced that sufficient progress is being made by the parents, extended family and/or custodians, and more time would be in the best interests of the child, the court may continue the case beyond a twelve-month disposition.
- (2) If the court's order does not finally conclude the case, the court shall specify in its order the date for further reporting to the court, and the date for further disposition at hearing. The court shall order a review of the case at least every six (6) months to determine whether any progress has been made by the parent(s), extended family and/or custodian(s).

**Section 7-1-7. Procedures for guardianship and cessation of parental rights.**

*A. Definitions.*

- (1) *Suspension of parental rights* means the temporary or indefinite severance of the legal relationship between parent and child.
- (2) *Cessation of parental rights* means the permanent cancellation of the legal relationship between parent and child, subject only to retained rights of the child, and certain residual rights of the parent(s), or as the children's court may recognize as appropriate.

*B. Duration of suspension or cessation of parental rights.* Parental rights of a natural or adoptive parent may be severed temporarily or permanently. Upon the temporary suspension of parental rights, the person assuming the traditional parental rights of the child shall be deemed a custodian. Upon the permanent cessation of parental rights, the person assuming the traditional parental rights shall be deemed the adoptive parent.

*C. Preservation of Laguna rights.* The cessation of parental rights shall not adversely affect the child's rights and privileges as an Indian, nor as a member of any Tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Pueblo of Laguna, nor shall it interfere with the child's cultural, traditional or spiritual growth as a member of the Pueblo of Laguna.

D. *Petition for voluntary guardianship.*

- (1) *Petition.* The process for creation of a voluntary guardianship shall be initiated by the filing of a petition entitled "petition for guardianship". The petition shall be filed in the name of a parent having custody of the child or a proposed custodian. The petition shall contain the following information:
  - (a) The name, age and residence of each living parent of the child;
  - (b) The name, age and residence of the child;
  - (c) The name, age and residence of the proposed custodian or custodians;
  - (d) The jurisdictional basis of the Laguna Children's Court over the matter;
  - (e) A statement of the facts indicating that the guardianship is in the best interests of the child;
  - (f) The duration of the proposed guardianship, and whether such is to be of a definite or indefinite duration;
  - (g) Whether the guardianship is consented to by each living parent of the child, and, if not, any facts excusing such consent, including any facts related to the physical care or custody of the child, past or present, which may be relevant to the petition.
- (2) *Consent.* The written and notarized consent of each parent consenting to the guardianship shall be filed with the petition. Such consents shall be executed before an adult witness. Such consents shall not be invalidated by reason of the minority of the consenting parent.
- (3) *Investigation.* Upon the filing of a petition, the children's court may order such investigation, by Laguna Social Services or other agency, as it deems necessary for a full determination upon the petition.
- (4) *Summary order.* If the children's court determines that the proposed custodian is a member of the child's extended family, clan or community, or otherwise has significant ties to the child, and that the guardianship has been consented to by each living parent of the child, and that the guardianship is in the best interests of the child, the children's court may enter a summary order of guardianship as requested in the petition.
- (5) *Notice.* If the guardianship has not been contested to in writing by each living parent of the child, then each such parent not having consented shall be given written notice of the proceedings, including the date of hearing upon the petition and a copy of the petition. Such notice shall be served personally where the whereabouts of the parent is known and such service is practicable, otherwise service shall be made as ordered by the children's court by the most effective means and consistent with the due process rights of the parent.
- (6) *Hearing.* Unless the guardianship is granted by summary order, the children's court shall hold a hearing upon the petition and shall determine if the guardianship is in the best interests of the child. If a nonconsenting parent appears at the hearing and

contests the guardianship, the petition shall be denied unless the children's court determines, upon clear and convincing evidence, that the guardianship is in the best interests of the child, and the nonconsenting parent is unable to furnish a home for the child which is more beneficial to the needs and the normal development of the child than the home of the proposed custodian.

- (7) *Order.* Upon a determination that the petition should be granted, the children's court shall enter an order of guardianship. Such order shall contain the following:
  - (a) The jurisdictional basis of the children's court;
  - (b) The name of the custodian or custodians;
  - (c) The duration of the guardianship, whether of definite or indefinite duration;
  - (d) A factual finding that the guardianship is in the best interests of the child and the reasons therefor;
  - (e) Any specific conditions of guardianship, including rights of the parents.
- (8) *Termination of guardianship.* The guardianship shall terminate upon any of the following:
  - (a) The duration specified in the order; or
  - (b) The further order of the children's court, terminating guardianship, or the death of the custodian or other circumstances creating a practical inability of the custodian to care for the child.
  - (c) Upon termination of the guardianship, all legal parental rights shall be reinstated to the person or persons having such rights prior to the creation of the guardianship.
- (9) *Informal guardianship.* An informal guardianship or traditional guardianship may be created by the placement of a child by a natural parent or parents with another person or family, without children's court proceedings.
  - (a) *Creation of informal guardianship.* Such a guardianship must be voluntarily entered into by the natural parent or parents involved and the custodian, and shall be recognized as a legal guardianship for so long as the consensual relationship continues.
  - (b) *Rights of nonconsenting parent.* No informal guardianship may be created over the objections of a natural parent having custody or joint custody of the child. A natural parent who does not have custody of the child, and who has not consented to such a traditional guardianship may petition the children's court for denial of the informal or traditional guardianship, for custody of the child, or for such other appropriate relief as the parent believes is in the best interest of the child.
  - (c) *Hearing upon petition.* Upon the filing of such a petition, by a nonconsenting parent, the children's court may order an investigation and shall hold a hearing

in accordance with subsection D.(6) above, and the matter shall thereafter be determined in accordance with the procedures for determination of a formal guardianship petition.

- (d) *Termination of informal guardianship.* After the creation of a traditional guardianship, if the natural parent or parents consenting to the guardianship shall elect to terminate the guardianship and request the return of the child, such request shall be granted by the custodian and the child shall be returned to the parent or parents so requesting. If the custodian does not believe that the termination of the guardianship status is in the best interest of the child, the custodian may, in the alternative, file or cause to be filed, a petition asking that the child be declared a child in need of care under section 7-1-6 of this chapter.

E. *Adoption.* An adoption may be accomplished either involuntarily or voluntarily.

- (1) *Involuntary.* An involuntary adoption may only be accomplished upon a cessation of parental rights under section 7-1-6 of this chapter, and a further hearing under subsection 7-1-7E.(3) to determine whether the proposed adoption is in the best interests of the child.
- (2) *Voluntary.* A voluntary adoption may be accomplished by formal children's court process or informally.
- (3) *Petition.* The process for a voluntary adoption shall be initiated by the filing of a petition entitled "petition for adoption". The petition shall be filed in the name of the proposed adoptive parent and shall contain the following information:
  - (a) The name, age and residence of each living parent of the child;
  - (b) The name, age, date of birth, and residence of the child, and the Laguna affiliation of the child;
  - (c) The name, age and residence of the proposed adoptive parent or parents;
  - (d) The basis of the children's court's jurisdiction over the adoption of such child;
  - (e) Whether the adoption is consented to by each living parent of the child, and, if not, any facts excusing such consent;
  - (f) A full statement of the value of any property of the child, or of which the child is expected to become entitled after the adoption;
  - (g) Any facts related to the physical care or custody of the child either present or past, which is relevant to the petition;
  - (h) Any facts relative to the adoptive parent's ability to provide for cultural, traditional and spiritual development of the child.
- (4) *Consent.* Such consents must be executed in writing and recorded before a judge and accompanied by the judge's certificate that the terms and consequences of consent were fully explained in detail and were fully understood by the parent or Indian custodian. The children's court shall also certify that either the parent or custodian

fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten (10) days after birth of the child, shall not be valid.

- (5) *Withdrawal of consent.* A consent executed by a parent may be withdrawn, for any reason, at any time prior to a final order of adoption. A consent executed by an adult may be withdrawn, in the discretion of the children's court, upon a showing that such a withdrawal is in the best interest of the child, at any time prior to final order of adoption. After entry of a final decree, a parent may withdraw consent thereto if consent was obtained through fraud or duress and the parent may petition the children's court to vacate the decree.
- (6) *Investigation.* Upon the finding of a petition for adoption, the children's court shall order such investigation as it deems necessary for a full determination upon the petition.
- (7) *Summary order.* The children's court may enter a summary order of adoption if it is requested in the petition, provided the children's court, upon investigation and inquiry, determines as follows:
  - (a) That one (1) of the proposed adoptive parents is a member of the child's extended family or community, or otherwise has significant ties to the child;
  - (b) That the adoption has been consented to by each living parent of the child;
  - (c) That the proposed adoptive home is an adequate environment for the development of the child;
  - (d) That the proposed adoptive parents can provide the child with the unique values of Laguna or other indigenous culture; and
  - (e) That the adoption is in the best interests of the child.
- (8) *Notice.* If the adoption has not been consented to in writing by each living parent of the child, then each such parent not having consented shall be given written notice of the proceedings, including the date of the hearing upon the petition and a copy of the petition. Such notice shall be served personally whenever the whereabouts of the parent or parents is known and such service is practicable, otherwise service shall be made as ordered by the children's court by the most effective means and consistent with the due process rights of the parent or parents.
- (9) *Hearing.* Unless the adoption is granted by summary order, the children's court shall hold a hearing upon the petition.
  - (a) The first part of the hearing shall address the question of the cessation of parental rights of any nonconsenting living parent. The burden of proof shall be upon the petitioner to present evidence at the termination stage of the proceeding to prove, by clear and convincing evidence, that the nonconsenting parent's rights should be terminated, and that there is supporting evidence therefor.



- (b) The second part of the hearing shall address the proposed adoption, and the petitioner shall have the burden of proof therein to prove, upon clear and convincing evidence that the adoption is in the best interests of the child.
  - (c) The hearing may be bifurcated to hear the separate parts of the hearing at different times, and the hearing may be continued at any stage, in the children's court's discretion, for such time as may be necessary for a full determination of parental rights or whether the proposed adoption is in the best interests of the child.
- (10) *Cessation of parental rights.* The court may order a cessation of parental rights if it determines, by clear and convincing evidence, that the parent in question has severed the parent-child relationship, and that the continuing of the parent-child relationship is no longer in the best interests of the child. The following circumstances may be indicative of the severance of the parent-child relationship, but are not meant to be exclusive circumstances for cessation:
- (a) Where the parent is no longer living with the child and has failed to maintain any meaningful contact with the child for a significant time;
  - (b) A parent who has committed serious acts or omissions which cause the child to become a child in need of care, under the standards of section 7-1-5 of this chapter;
  - (c) A parent who has failed to contribute to the financial and emotional support of the child during a period of more than six (6) months prior to the filing of a petition, under the circumstances where the parent could have contributed support, and such support would have been necessary and/or beneficial to the child's welfare.
  - (d) Where a parent is not capable of providing for the safety and welfare of a child.
- (11) *Order.* Upon a determination that good cause, by clear and convincing evidence, exists for a cessation of parental rights of the living parent or parents of the child, or that all living parents have freely and voluntarily consented to the adoption with full knowledge of the effect of the adoption, the children's court shall enter an order of adoption. The order shall include the following:
- (a) The name, age and residence of each parent of the child;
  - (b) The name, age and date of birth, and residence of the child, and all relevant facts as to Laguna affiliation and membership of the child;
  - (c) The jurisdiction of the children's court;
  - (d) Whether the adoption is consented to by each living parent of the child, and, if not, facts excusing the consent upon which the children's court relies in a cessation of parental rights of a nonconsenting parent or parents;

- (e) A full statement of the property of the child, and the value thereof, and any provisions the children's court may impose for the protection or distribution of such property;
  - (f) That the adoptive parents are fit to provide a home environment for the healthy development of the child, and that the adoption is in the best interests of the child;
  - (g) Facts showing that all parties entitled to notice were given notice consistent with their rights to due process.
- (12) *Relationship of adoptive parent and child.* Upon the entry of an order of adoption, the relation of parent and child and all rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between the adopted child and the adoptive parents. Unless otherwise ordered by the children's court, the child shall be entitled to inherit real and personal property from the adoptive parent or parents, and the kindred of the adoptive parent or parents, according to the customs of the Pueblo, and the adoptive parent or parents shall be entitled to inherit property from the adopted child as if the adopted child was their natural child. Unless otherwise ordered by the children's court, the rights, duties, and obligations, including the rights of inheritance, between the child and the child's natural parents shall be canceled. However, the order shall state that the children's court has determined questions of inheritance and residual parental rights and determined that certain specified inheritance rights shall be continued between the natural parents and the child.
- (13) *Failed adoptions.* In cases of failed adoptions, notices of any hearing regarding the child shall be sent to the natural biological parents and any previous Indian custodians.

F. *Informal adoptions.*

- (1) *Creation of informal adoption.* Such an adoption must be voluntarily entered into by the natural parent or parents involved and the custodian, and shall be recognized as a legal adoption. The natural parent or parents consenting to the adoption must do so with knowledge of the permanent nature and effect upon their natural parent rights.
- (2) *Rights of nonconsenting parent.* No informal adoption may be created without the consent of each living, natural parent of the child unless the children's court, or some other children's court of competent jurisdiction, has ordered a cessation of that natural parent's legal rights. A nonconsenting parent may petition the children's court at any time within two (2) years of the discovery of the creation of the informal adoption, and request the children's court to deny the adoption, or for such other appropriate relief as the parent believes may be in the best interest of the child and consistent with the rights of the natural parent under the laws of the child's Tribe and this chapter.
  - (a) Upon the filing of such a petition, the children's court shall hold a hearing in accordance with subsection 7-1-7E.(8), and the matter shall thereafter be determined in accordance with the rules of procedure for determination of a formal adoption petition.

- (3) *Residual rights of the natural parent.* By agreement between the natural parent or parents and the adoptive parent, or by order of the children's court, certain residual rights may be maintained by the natural parents of the child. The extent and nature of the residual rights shall be determined by the agreement of the natural parents and adoptive parent, or by order of the children's court, in the case of the filing of a petition under this part. Residual rights shall be in accordance with section 7-1-7.
- (4) *Relationship of adoptive parent and child.* Following the effective creation of an informal adoption, the relation of parent and child and all rights, duties and other legal consequences of the natural relation of the child and the parent shall be in accordance with subsection 7-1-7E.(11), as specified for formal adoptions.

**Section 7-1-8. Procedures for transfer of Indian Child Welfare Act cases and recognition of non-Laguna court orders.**

*A. Procedures for transfer from state court.*

- (1) *Receipt of notice.* The Pueblo of Laguna agent for service of state court or agency child custody proceedings as defined by the Indian Child Welfare Act ("ICWA"), shall be Laguna Social Services.
- (2) *Investigation and pre-report.* Laguna Social Services shall conduct an investigation and file a written report with the children's court setting forth eligibility for transfer, results of the investigation and recommendations as to transfer within five (5) days of receipt from a state court or agency.
- (3) *Acceptance of transfer.* The children's court will notify the state of its decision on the proposed transfer within thirty (30) days of receiving the Laguna Social Services report.
- (4) *Hearing(s).* Upon receipt of transfer jurisdiction from state court, Laguna Social Services shall file an ICWA petition and appropriate hearing(s) shall be held in accordance with this chapter.

*B. Intervention in other court proceedings.* Laguna Social Services is authorized to intervene on behalf of the Pueblo of Laguna in any state, federal, or international court child custody proceedings, as defined by the Indian Child Welfare Act.

*C. Notification from other Pueblo of Laguna Courts.* When allegations of abuse or neglect of a child subject to children's court jurisdiction arise in any other court of the Pueblo of Laguna, the other court must immediately notify Laguna Department of Social Services and the children's court.

*D. Recognition of other court orders.*

- (1) *State court orders.* State child custody orders involving children over whom the children's court could take jurisdiction may be recognized by the court only after the court conducts an independent review of such state proceedings to determine the following:
  - (a) Whether the state court had jurisdiction over the child; and

- (b) Whether the provisions of the Indian Child Welfare Act were properly followed; and
  - (c) Whether due process was provided to all interested persons participating in the state proceeding; and
  - (d) Whether the state court proceeding violates the laws, public policies, customs or common law of the Pueblo of Laguna.
- (2) *Court orders of other Pueblo Courts.* Court orders of other Pueblo Courts involving children over whom the children's court could take jurisdiction may be recognized by the court after it has determined the following:
- (a) Whether the other Pueblo Court exercised proper subject matter jurisdiction and personal jurisdiction over the parties; and
  - (b) Whether due process was accorded to all interested parties participating in the other Pueblo Court proceeding; and
  - (c) Whether the Pueblo Court proceeding violated the laws, public policies, customs or common law of the Pueblo of Laguna.
- (3) *Orders for protection from other jurisdictions.* The Courts of the Pueblo of Laguna shall recognize and exercise comity with regard to all orders for protection from other jurisdictions unless such orders violate the constitution or laws of the Pueblo of Laguna. In the event a conflict of laws exists as to a part of the order of protection, the court will effectuate such parts of the order of protection which are not in conflict with the Constitution and laws of the Pueblo of Laguna.
- (4) *Annual reports.* The Laguna Council shall be furnished with an annual report from the children's court on all actions taken under delegation of authority to the court.

**Section 7-1-9. Establishment of parentage and support.**

A. *Child's right to support.* The parents are jointly liable for the support of the child until he or she reaches eighteen (18) years of age, is emancipated, or the court has ordered a cessation of parental rights, notwithstanding the child's parents have never been married to each other.

B. *Establishing parentage.* The parentage of a child may be established by:

- (1) A written acknowledgment by a parent that he is the father of or she is the mother of the child, and which is filed with the children's court; or
- (2) A judicial determination by the children's court.

C. *Proceedings to establish parentage and compel support.*

- (1) *When and by whom proceedings may be filed.*
  - (a) Proceedings to establish parentage may be brought in the children's court any time before the child is eighteen (18) years of age by a parent or the child acting through a guardian if the complainant parent dies or becomes disabled, or by the Pueblo; and

- (b) Proceedings to compel support from a parent may be brought in the children's court at any time until a child reaches the age of eighteen (18) or becomes an adult through emancipation or marriage, and shall be brought by a complaining parent, by the child if the complainant dies or becomes disabled or by the Pueblo. Proceedings on behalf of a child may be brought by the custodian of the child.
- (2) *Form of Petition; summons; procedures.*
  - (a) The petition shall be in the form approved by the children's court and shall charge the person named as respondent with being the father or mother of the child and demand that such person be compelled to support the child.
  - (b) A summons shall be issued and served as in other actions in this chapter, as provided in section 7-1-3.
  - (c) Notice and procedures shall be the same as that of other actions in this chapter, as provided in section 7-1-3.
- (3) *Evidence for determination of parentage.* In actions for determination of parentage, the court shall consider evidence of parentage including but not limited to, DNA test results, testimony of the alleged father, and birth and baptismal certificates.
- (4) *Orders.* The court shall enter its order determining the child's parentage and support, if any, at the conclusion of the hearing.
- (5) *Start of proceedings.* Proceedings may be started before the birth of the child, but, unless the alleged father consents, trial will not be held until at least fifteen (15) days after the birth of the child.

D. *Rights of a child once parentage is established.* After the parentage of a child is established, the child has the same rights of inheritance from the person who is established as a parent that a child born as a result of a lawful marriage has under Laguna law and custom.

#### **Section 7-1-10. Emancipation.**

##### *A. Petition for emancipation.*

- (1) A child sixteen (16) years of age or older may petition the court, individually or through social services, a guardian or other custodian, for emancipation. The decision shall be made by a clear and convincing standard.
- (2) The petition shall be in the form approved by the children's court and request that the petitioner be emancipated.

##### *B. Evidence for the determination of emancipated status shall include, but is not limited to:*

- (1) The real or apparent assent of his or her parent(s);
- (2) Demonstration of his or her independence from his or her parents in matters of care, custody and earnings through employment or other means provides for his or her own food, shelter and other cost-of-living expenses;
- (3) Proof he/she has sole responsibility for his or her own support; or

(4) Any other evidence the court finds relevant to make an emancipation determination.

C. *Notice and procedures* shall be the same as that provided for other actions in this chapter, as provided in section 7-1-3.

D. *Rights of child upon emancipation.* Upon determination of emancipation by a court order, a child is entitled to all roles and responsibilities of adult members of the Pueblo of Laguna.

**Section 7-1-11. Petitions for rehearing; modification of an order; appeals.**

A. *Grounds for rehearing.* A parent, guardian or custodian of any child whose status has been adjudged in a proceeding under this chapter, or any adult affected by an order or judgment in a proceeding under this chapter, may within one (1) year petition the children's court for a new hearing on the grounds that new evidence which was not known or could not with due diligence have been made available at the original hearing and which might affect the order or judgment, has been discovered. If it appears to the children's court that there is such new evidence which might affect its order or judgment, it shall order a new hearing and enter such order or judgment and make such disposition of the case as is warranted by all the facts and circumstances and the best interest of the child.

B. *Modification, revocation or extension of an order.*

- (1) The children's court with cause may modify, revoke or extend an order at any time upon the motion of the following:
  - (a) The child and his or her attorney;
  - (b) The child's parent, guardian or custodian, and his or her legal representative if appropriate;
  - (c) Laguna Social Services.
- (2) A hearing to modify, revoke or extend a children's court order shall be conducted according to the rules of the children's court.

C. *Appeals.*

- (1) Parent, guardian or custodian of any child whose status has been adjudged in a proceeding under this chapter, or any adult affected by an order or judgment in a proceeding under this chapter may appeal a final order affecting the aggrieved person, including, but not limited to; an order determining parentage and support, or an order adjudging a child to be in need of care, abused, dependent or neglected or emancipated.
- (2) The appeal shall be taken to the Pueblo of Laguna Court of Appeals within thirty (30) days of the filing of the order of the court. The clerk of the court shall notify the person having custody of the child of the appeal. Failure to notify the person having custody of the child does not affect the jurisdiction of the court of appeals. The order of the children's court shall stand, pending the determination of the appeal, but the court of appeals may, in its discretion and upon application, stay the order.

- (3) The appeal from the children's court is taken to the Court of Appeals of the Pueblo of Laguna and shall be based on questions of law only. This shall include Laguna customary and traditional law. The procedure on the appeal shall be as prescribed in the rules of the court.

**Section 7-1-12. Local child protection team.**

A. *Establishment.* There shall be established a local child protection team, to be advisory in nature, and designed to promote cooperation, communication, and consistency among agencies as they ensure the safety and protection of children. It is not intended to replace the authority and responsibility of any agencies that address issues of child welfare or the children's court, but shall facilitate the decision making process.

B. *Composition of child protection team.*

- (1) There shall be a core child protection team which shall be composed of the following:
  - (a) Laguna Department of Social Services;
  - (b) Laguna Police Department;
  - (c) Pueblo of Laguna Courts;
  - (d) Educational institutions within the Pueblo of Laguna; and
  - (e) Medical agencies that serve the Pueblo of Laguna.
- (2) Additionally, the child protection team may be composed of the following members:
  - (a) Laguna Service Center;
  - (b) Laguna Family Services;
  - (c) Laguna Head Start;
  - (d) Community health representative (CHR);
  - (e) IHS Public Health Nurses;
  - (f) IHS Social Services/Mental Health;
  - (g) ACL Substance Abuse Dept.;
  - (h) Laguna Pueblo Council, ex-officio member; and
  - (i) Bureau of Indian Affairs Investigator.

C. The child protection team may facilitate provision of services in the following manner:

- (1) Provide recommendations to assure services for children in culturally relevant Laguna homes.
- (2) Provide recommendations on a forum for discussing what actions would best promote the well-being of children.
- (3) Provide recommendations to assist in identifying potential foster homes.
- (4) Provide recommendations of available community resources, programs and services.

- (5) Provide recommendations to various pertinent agencies.
- (6) Promote cooperation, communication and consistency among agencies involved in child placement.
- (7) Develop strategies to address provision of effective, and efficient preventive, protective and corrective child abuse and neglect services.
- (8) Address situations which prompt reporting responsibility and/or preventative action.

D. The child protection team shall conduct meetings according to approved bylaws and procedures, which shall include provisions on maintaining confidentiality.

## CHAPTER 2. JUVENILES

### ARTICLE I. CHILD PROTECTION

#### *PART I. PURPOSE AND POLICY*

##### **Section 7-2-1. Purpose.**

The Pueblo of Laguna Council, recognizing that the future of our existence as a people is intricately connected to the safety and welfare of all children in the Pueblo, hereby enacts this Code to establish policies and procedures to protect the interests of its children, families, the Pueblo, and its customs and traditions, laws, and culture.

- A. The Pueblo of Laguna Council hereby adopts this Code in order to implement the following policies with regard to the welfare of children:
  - (1) Protect the best interest of children within the Pueblo of Laguna, prevent the unwarranted breakup of families, maintain the connection of children to their families and tribe, and promote the stability and security of the Pueblo by codifying Laguna standards for the conduct of child custody proceedings; and
  - (2) Foster cooperative intergovernmental relations between the Pueblo of Laguna and the State of New Mexico and other states and Tribes, with regard to the welfare of children and families; and
  - (3) Preserve and encourage the cultural and spiritual development of children within the Pueblo of Laguna, including support for traditional child-raising practices; and
  - (4) Provide child welfare services to children and families that are in accord with the customs, traditions, laws and cultural values of the Pueblo of Laguna; and
  - (5) Preserve and strengthen the child's individual, cultural and Tribal identity, so that children may become healthy and productive adult members of the Pueblo of Laguna community; and



- (6) Remove juveniles from the ordinary criminal process in order to avoid the stigma of prior convictions, and to remove from juvenile offenders the legal consequences of criminal behavior and substitute therefore a program of supervision, care and rehabilitation consistent with the rights outlined in this Code; and
- (7) Provide judicial and other procedures through which the provisions of this Code are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights recognized and enforced; and
- (8) Provide a continuum of services for juveniles and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention, community-based alternatives, and achieving this purpose in a family and community environment whenever possible, separating a juvenile from parents only when necessary for his or her welfare or in the interests of public safety; and
- (9) Provide a forum where an Indian child charged to be "delinquent" or a "status offender" in other jurisdictions may be referred for adjudication and/or disposition.

**Section 7-2-2. Rights of children within the Pueblo of Laguna.**

A. The Pueblo of Laguna hereby sets forth the following rights of children, bearing in mind the role of children in the family and in the community:

- (1) Every child has the right to be loved and nurtured.
- (2) Every child has the right to preserve and be nurtured in every aspect of the child's identity, including Tribe, clan, name, family relations, as well as physical, emotional, spiritual and sexual orientation.
- (3) Every child has a right not to be separated from their parents against their will, except when such separation is necessary for the best interests of the child.
- (4) Every child who is capable of forming their own views has the right to express those views in matters affecting the child, giving due consideration to the age and maturity of the child.
  - a. For this purpose, every child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body.
- (5) Every child has the right to freedom of association and to freedom of peaceful assembly, subject to restrictions which are necessary for public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.
- (6) Every child of working parents has the right to benefit from child-care services and facilities for which the child is eligible.

- (7) Every child has the right to be protected from all forms of physical and verbal, or mental and emotional violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse and sexual exploitation.
- (8) Every child, including the mentally, emotionally or physically challenged child, should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitates for the child's active participation in the community.
- (9) Every child has the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.
- (10) Every child has the right to education directed to the development of the child's personality, talents, and mental and physical abilities to their fullest potential.
- (11) Every child has the right to be educated by the community, to enjoy their own culture, to profess and practice their own religion, and to use their own language.
- (12) Every child has the right to rest and leisure, to engage in plan and recreational activities appropriate to the age of the child, and to participate in cultural life.
- (13) Every child has the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, emotional, spiritual, moral or social development.
- (14) Every child has the right to be raised in an environment free of drug and alcohol abuse.
  - a. Every child has the right to be protected from the abuse and illegal use of drugs, alcohol and tobacco, as well as mood altering and physically harmful substances.
  - b. Every child has the right to be protected from being used in the illicit production and trafficking of such substances.
- (15) No child shall be subjected to cruel, inhuman, degrading treatment or punishment.
  - a. The use of detention for a child under this Code shall be used only as a deterrent for serious offenses or for the protection of the community and for an appropriate period of time;
  - b. Every child lawfully detained shall be treated with humanity and respect, and in a manner which takes into account the needs of persons of the child's age.
- (16) Every child alleged as, accused of, or recognized as having infringed Laguna laws, regulations, or customs has the right to be treated with dignity, while encouraging the child's respect for others, taking into account the child's age, and the desirability of promoting the child's reintegration and taking a constructive role in the community.

B. The exercise of these rights may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary. The Pueblo of Laguna shall respect and support the rights and duties of the parents, grandparents, custodians, or legal guardians, to provide direction and nurturing to the child in the exercise of their right, in a manner consistent with the evolving capacities of the child.

**Section 7-2-3. Definitions.**

A. Terms under this Code are to be interpreted in a broad fashion designed to encourage the jurisdiction of the Children's Court over children who come under this Code, and to facilitate the authority of the Pueblo of Laguna Children's Court to act to protect the interests of Laguna children and families.

B. The terms in this section shall be interpreted in light of Laguna laws, customs and traditional child-rearing practices. Terms not specifically defined in this Code shall be defined according to their normal usage.

*Abandonment.* The failure of the parent, guardian, or custodian to provide support and to maintain contact with a child. Custody with extended family members through mutual consent to placement does not constitute abandonment.

*Abuse.* The infliction of physical, emotional or mental injury on a child, or sexual abuse or sexual exploitation of a child, including failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that their health, moods or emotional well-being is endangered.

*Active efforts.* Actions taken to engage affected families in activities and services designed to keep the family intact.

*Adjudicatory hearing.* A proceeding in the Children's Court to determine whether a child has committed a specific juvenile offense.

*Adult.* Individual who is eighteen (18) years of age or older, or a child emancipated by a Children's Court of competent jurisdiction.

*Advocate.* A nonlawyer who is authorized to practice before the Laguna Courts.

*Best interests of the child.* The preservation of the connection, or the creation of such a connection if one does not currently exist, between a Pueblo of Laguna child and their family, culture or the Pueblo in a setting that is stable, secure, safe, healthy and emotionally, spiritually, socially and intellectually enriching, and in which the special needs of that child may be met.

*Cessation of parental rights.* The permanent cancellation of the legal relationship between parent and child.

*Child.* An individual who is less than eighteen (18) years old.

*Consent decree.* A court order which suspends a "juvenile offender" proceeding after a petition is filed and prior to adjudication and continues the child or the family under supervision under terms and conditions negotiated with the juvenile prosecutor and agreed to by all parties.

*Counsel.* An attorney or advocate authorized to practice in the Pueblo of Laguna Courts.

*Court.* The Pueblo of Laguna Children's Court unless otherwise specified.

*Court appointed special advocate (CASA).* An advocate who is trained under the CASA program and is appointed by a presiding judge, on behalf of a child, to provide the court with independent information on the case.

*Curriculum change.* Includes, but is not necessarily limited to: a) a change in a child's instructor, if available; b) a change in the scheduling of a child's classes, if available; c) reassignment of a child into another class section, if available; d) a change in the content of child's course of instruction, if available; and e) change in the child's school, if available.

*Custodian.* A person, other than a parent or guardian, who exercises physical control, care or custody of the child, including any employee or a residential facility or any person providing out-of-home care.

*Detention.* Exercising authority over a child by physically placing them in any juvenile facility designated by the court and restricting the child's movement in the facility.

*Disposition hearing.* A proceeding in the Children's Court to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific juvenile offense.

*Domicile.* A person's permanent home, legal home or main residence. The domicile of a child is generally that of the parent, custodian or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home.

*Emergency foster home.* Placement with a family whose home has been licensed to accept placements of children at any hour of the day or night.

*Expert witness.* A person who is:

- a. A member of the Laguna or other Indian community who is an acknowledged expert on the cultural or spiritual traditions of the child's Tribe;
- b. A professional person having a recognized education in medical, social, spiritual or other fields which the court may determine relevant in child custody proceedings and who has special expertise in Indian culture.

*Extended family.* Any person related by blood or marriage to the child having significant contacts with the child and who is viewed as an extended family member in accordance with the customs of the Pueblo of Laguna or the child's Tribe, including the grandparents of a child.

*Foster care.* The placement of a child outside of their home, to reside with another family or person for a specified period of time.

*Group home.* A residential detention facility which is licensed to care for children under the age of eighteen (18).

*Guardian.* A person other than the child's parent who is by law responsible for the care and custody of that child or their estate, or both.

*Guardian ad litem (GAL).* A person appointed by the Children's Court to represent and protect the legal rights and interests of the child in a Children's Court proceeding.

*Indian.* Any member of a federally recognized Indian Tribe, band or community, or an Alaska Native who is a member of a regional corporation as defined in 43 USC § 1606, or a person considered by the Pueblo of Laguna to be Indian.

*Juvenile facility.* Any juvenile facility (other than a school) that cares for juveniles or restricts their movement, including secure juvenile detention facilities, alcohol or substance abuse emergency shelter or halfway houses, foster homes, emergency foster homes, group homes and shelter homes.

*Juvenile offender.* A child who commits a "juvenile offense" prior to the child's eighteenth (18th) birthday or is still under the jurisdiction of this Code.

*Juvenile offense.* A violation of the Pueblo of Laguna Criminal Code, or other defined offenses including status offenses, which is committed by a person who is under the age of eighteen (18) at the time of the offense was committed.

*Juvenile probation officer (JPO).* A hired employee serving in the capacity of an officer of the court and performs the duties and responsibilities outlined in Part II section 7-2-261 of this Code and all other duties described in their job description.

*Legal custody.* The right and responsibility to mental, emotional, and physical care, custody and control of a child who has been taken by the court in accordance with the provisions of this Code.

*Next of friend.* Any individual who a party requests to participate in any proceeding who is not a paid attorney or advocate.

*Parent.* The natural or adoptive parents, but does not include persons whose parental rights have ceased pursuant to order of the Children's Court, nor does it include the unwed father whose paternity has not been acknowledged or adjudicated.

*Probation.* A legal status created by court order under which a person, including juvenile offenders, are released into the community under stated conditions, including supervision, in lieu of detention.

*Protective supervision.* A legal status created by court order under which a juvenile offender is permitted to remain at home or is placed with a relative or other suitable individual and supervision and assistance is provided by the court, a health or social service agency, or some other agency designated by the court.

*Residence.* The place where the child is presently living.

*Secure juvenile detention facility.* A facility which: a) contains locked cells or rooms which are separated by sight and sound from any adult inmate; b) restricts the movement of the offender in placed in the locked cells or rooms; and c) substantially complies with the Juvenile Justice and Delinquency Prevention Act (42 U.S.C. § 5603 (13) (2004)).

*Shelter care.* The residential care of children in a shelter care facility or group home approved by the Pueblo of Laguna Social Services or Family Services.

*Social services.* The Department of Social Services of the Pueblo of Laguna.

*Status offense.* An offense committed by a juvenile which if committed by an adult would not constitute a criminal offense.

*Suspension of parental rights.* The temporary or indefinite severance of the legal relationship between parent and child.

*Transfer to Tribal Court.* A transfer of a child from the jurisdiction of the Children's Court to the jurisdiction of the Tribal Court according to section 7-2-22 of this Code which results in the termination of the matter before the Children's Court.

*Tribal Council.* The Pueblo of Laguna Council.

*Tribal Court.* The Court of general jurisdiction for the Pueblo of Laguna.

**Secs. 7-2-4—7-2-20. Reserved.**

## *Part II. ESTABLISHMENT OF PUEBLO OF LAGUNA CHILDREN'S COURT*

### **Section 7-2-21. Establishment and delegation of authority.**

There is hereby established for the Pueblo of Laguna a court to be known as the Pueblo of Laguna Children's Court. The primary function of the Children's Court shall be to foster the well-being of all children within the Pueblo of Laguna. The court shall have jurisdiction over abuse, neglect and dependency in nature and it shall possess the authority to issue all orders necessary to insure the safety and well-being of children who have been declared to be wards of the Children's Court. In addition, the court shall hear all juvenile delinquency matters including consent decrees, status offenses, and all other juvenile offenses not transferred to the Laguna Tribal Court.

### **Section 7-2-22. Jurisdiction of the Children's Court.**

A. The Children's Court shall have jurisdiction over all children within the exterior bounds of the Pueblo of Laguna, children of Pueblo of Laguna members, pursuant to the Indian Child Welfare Act, 25 U.S.C. §§ 1901—1963 (2004), and children by the consent of the parties with custody of such children.

B. *The Pueblo of Laguna Children's Court shall have original exclusive jurisdiction over all matters relating to:*

- (1) Any child who is suspected of being abused, neglected or dependent.

- (2) Any child in which an Indian child residing in or domiciled on the Reservation is alleged to be a juvenile offender as defined in section 7-2-3 of this Code, unless the court transfers the matter to the Laguna Tribal Court jurisdiction according to section 7-2-22 of this Code.
  - a. The court may retain jurisdiction over a juvenile offender until they reach their eighteenth (18th) birthday, or if the juvenile has not completed high school or a General Education Diploma (G.E.D.), until they reach their twenty-first (21st) birthday.
  - b. The court may accept or decline transfers from states or other Tribal Courts involving alleged delinquent children or alleged status offenders for the purposes of adjudication and/or disposition.
- (3) Any child whose behavior is injurious to his or her own welfare or to the welfare of others.
- (4) Any child who is beyond the control of their parent, custodian or school authorities.
- (5) The custody of any child or the guardianship of any child who comes within the purview of the court's jurisdiction under the other provisions of this Code.
- (6) Proceedings for the adoption of a child.
- (7) Cessation of legal parent-child relationship, including residual parental rights and duties.
- (8) Emergency medical or surgical treatment of a child.
- (9) The treatment or commitment of a mentally defective, mentally ill child or any child who exhibits a deviant behavior pattern who comes within the purview of the court's jurisdiction under other provisions of this Code.

C. *Jurisdiction of Indian Child Welfare Act proceedings.* The Pueblo of Laguna Children's Court may also exercise jurisdiction over child custody proceedings by transfer from state proceedings, pursuant to the Indian Child Welfare Act ("ICWA") (Public Law 95-608), 25 USC 1901-1963, and the rules and regulations promulgated by the Secretary of the Interior in Title 25, CFR, Parts 13 and 23, where they do not conflict with the provisions of the Pueblo of Laguna Law and Order Code. The procedures for state courts in the ICWA shall not be binding upon the Pueblo of Laguna Children's Court except where specifically provided in this Code.

D. *Transfer to state court or other Tribal Court.* In any proceeding before the Children's Court, the court may transfer the proceedings to an appropriate state court or another tribal court where the Children's Court determines that the state or other Indian Nation has a significant interest in the child and the transfer would be in the best interests of the child.

E. *Transfer from other courts.* The Children's Court may accept or decline, under the procedures set forth in this Code, transfers of child welfare cases and juvenile delinquency cases from federal, international, state and Tribal Courts.

F. *Continuing jurisdiction.* The Children's Court may exercise continuing jurisdiction to further the best interest of children and their extended families who, while subject to the Children's Court jurisdiction under this section 7-2-22, leave the Reservation.

G. *Jurisdiction over extended family.*

- (1) Where the Children's Court exercises exclusive jurisdiction over a child under subsection B. above, the court shall also have civil jurisdiction over the child's extended family residing in the household whenever the court deems it appropriate.
- (2) The Children's Court shall have jurisdiction over any adult whose behavior causes or tends to cause the child to come within the jurisdiction of the court. Such person shall be provided notice and opportunity for hearing.

H. *Comity.* The court shall exercise comity with regard to state and Tribal child custody orders, where such orders are consistent with the public policy of the Pueblo, the intent of the Indian Child Welfare Act, due process, and the laws and customs of the Pueblo of Laguna.

#### **Section 7-2-23. Children's Court Judge.**

A. *Appointment.* A Children's Court Judge shall be appointed in the same manner as other Pueblo of Laguna Court Judges.

B. *Qualifications.* The general qualifications for a Children's Court Judge shall be the same required under the judges ordinance. In appointing a Children's Court Judge, the Pueblo Council may consider the following areas of responsibility:

- (1) The Indian Child Welfare Act of 1978;
- (2) Both the human services and justice system contexts;
- (3) The ethical dilemmas, pretrial preparation, hearing related issues, and underlying child development and parental bonding, child protection and permanency planning principles;
- (4) Child welfare agencies that are caregivers to children; and
- (5) State and Tribal child protection systems.

C. *Powers and duties.* In order to implement this Code, the Children's Court Judge shall have the same duties and powers as a judge of the Laguna Pueblo Court, including, but not limited to, contempt powers, the power to issue subpoenas and warrants, and the power to conduct inquiries in child protection matters.

#### **Section 7-2-24. Records maintenance and protection: Confidentiality.**

A. *Children's Court records.* A record of all hearings under this Code shall be made and preserved until the jurisdiction of the Children's Court has terminated or until the child is eighteen (18) or emancipated, whichever comes first.



B. *Confidentiality.* All Children's Court files, documents or other material associated with a child custody proceeding governed by this Code shall be kept confidential, unless ordered released by order of the Children's Court. Such records shall not be open to inspection other than by Children's Court personnel or by any person except for the following:

- (1) The child and the child's attorneys;
- (2) The child's parent, guardian or custodian and their attorney;
- (3) Laguna Social Services and the attorney or advocate representing the child;
- (4) The presenting officer; or
- (5) Any other person the Children's Court determines has a valid reason to see such records and who is issued a written order detailing the reasons for permitting such person to review such records.

C. This section applies to the release of the names of children, families or witnesses involved in proceedings under this Code.

D. Disclosure of documents and material to authorized public agencies, whether Pueblo of Laguna, federal or state, in the performance of the official duties of those agencies shall not violate this section.

E. All records included within this section shall be kept in a secure place by the Children's Court clerk, and shall be released only pursuant to procedures developed by the judge of the Children's Court.

F. Each person who inspects a child's record shall be required to sign a written oath pledging to maintain the confidentiality of the records. Failure to abide by this pledge shall constitute contempt of Children's Court.

#### **Section 7-2-25. Destruction of records.**

All records of the child shall be destroyed when the child is no longer subject to the Children's Courts jurisdiction, except those records involving adoption, neglect, abandonment, or abuse of a child shall not be destroyed and shall remain sealed until further order of the Children's Court.

**Secs. 7-2-26—7-2-40. Reserved.**

### *Part III. PROCEDURES FOR LAGUNA CHILDREN'S COURT — GENERAL*

#### **Section 7-2-41. Application of procedures.**

The following procedures shall apply to all proceedings under the jurisdiction of the Children's Court, except where supplemented as indicated in this Code.

**Section 7-2-42. Payment of fees and expenses.**

There shall be a fee for filing a petition under this Code in all matters except a petition for a child in need of care filed by social services. In such a case, fees and expenses, cost of publication of summons, and the expenses of a trial, when approved by the Children's Court, shall be paid by the Pueblo of Laguna.

**Section 7-2-43. Summons.**

A. After a petition has been filed, unless the parties hereinafter named voluntarily appear, the Children's Court shall set a time and place for the hearing, and shall issue a summons to the parents, guardian, spouse, other interested parties, or other persons having custody or control of the child, stating that they are to appear with the child before the Children's Court at the time and place as set forth in the summons.

B. The Children's Court may issue a subpoena requiring the appearance of any person(s) it deems necessary.

**Section 7-2-44. Service of summons.**

A. The summons shall be served by personal service or by regular mail at least five (5) working days prior to the time of the hearing.

B. If any person served with a summons or subpoena fails, without reasonable cause, to appear or bring the child, the Children's Court may proceed against them for contempt of Children's Court, or the Children's Court may issue a warrant for their arrest, or both. In any case when it appears to the Children's Court that the service will be ineffectual or that the welfare of the child requires that they be brought into the custody of the Children's Court, the Children's Court may issue a summons for the child.

C. If it appears from the petition or by separate affidavit of a person having knowledge of the facts that the child is in a situation that their welfare requires that their custody be immediately assumed by the Children's Court, the Children's Court may order, by endorsement upon the summons, that the officer serving the summons take the child into custody at once.

**Section 7-2-45. Investigation; physical and mental examination.**

A. Upon request of the Children's Court, the Laguna Social Services shall investigate the personal and family history and environment of any child coming within the jurisdiction of the Children's Court and file a report or its findings with the Children's Court. The Children's Court may order any child coming within its jurisdiction to be examined by a duly qualified physician, psychiatrist, or psychologist appointed by the Children's Court, in order that the physical, mental, and emotional condition of the child be given due consideration in the disposition of the case.

B. If for any reason, such as religious beliefs, the child or the parent, custodian or guardian of the child objects to a physical and/or mental examination of the child as provided above, a hearing shall be conducted to determine the validity of the objection and the Children's Court shall read its order accordingly.

**Section 7-2-46. Conduct of hearings.**

A. Hearings shall be conducted without a jury and may be conducted in an informal manner. Hearings may be continued or recessed from time to time and, in the interim, the Children's Court may take such action and issue such orders as it deems in the best interest of the child. The Children's Court shall exclude the general public from these hearings and shall admit only those persons, who, in the discretion of the Children's Court, have a direct interest in the case or in the work of the Children's Court.

B. The child, parent, guardian or custodian has the right to be represented by an advocate, next of friend or attorney at their expense. They are also entitled to be heard, to present evidence material to the case and to confront and cross-examine witnesses appearing at the hearing. In addition, the court may appoint a court appointed special advocate (CASA).

C. The Children's Court may waive the presence of the child in court at any stage of the proceedings when it is in the best interest of the child to do so. In any proceeding, the Children's Court may temporarily excuse the presence of the parent or guardian of the child when it is in the best interest of the child to do so. The lay counsel, professional attorney or guardian ad litem, if any, has the right to continue to participate in any proceeding during the absence of the child, parent or guardian.

D. Where questions of Laguna tradition or customary law arise, the court may seek the assistance of Laguna traditional leaders, elders in the community and other community members knowledgeable in Laguna tradition and custom. Parties may seek the assistance of such experts at their own expense as well.

**Section 7-2-47. Guardian ad litem.**

A. At any stage of the proceedings conducted under this Code, the court may appoint counsel for the child to act as guardian ad litem representing the child's best interest, without affecting the right of counsel of the parents, guardians or other legal custodians.

B. A guardian ad litem acts as a quasi-judicial officer of the court and shall be guided by the best interests of the child and exercise independent judgment on behalf of the child in all relevant matters.

C. With the Children's Court Judge's written authorization, the guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or any person and shall have access to all relevant records of such agencies or persons relating to the child or the child's family members or placements of the child.

D. Compensation may be provided to every guardian ad litem appointed, at a rate to be determined by the Children's Court.

**Section 7-2-48. Testimony by videotape.**

At the discretion of the Children's Court, and where necessary to protect the best interest of the child, the Children's Court may permit a child to testify by videotape, or take other steps necessary to protect the child in proceedings under this Code.

**Section 7-2-49. Informal of nonjudicial resolution.**

A. In order to support the policy of keeping families together, it shall be the duty of Laguna Social Services, attorneys, advocates, and the Children's Court to encourage satisfactory, out-of-court solutions to cases under this Code prior to a final disposition hearing.

B. *Request.* Any party to a proceeding may request an informal or nonjudicial resolution. The request may be made at any time after the filing of a petition, up to the court's issuance of an order following the final disposition hearing.

C. *Referral by court.* The court in its discretion may refer the matter to village staff or appropriate Laguna Pueblo officials for resolution. In cases where a child has been removed from home the court shall make an initial referral of thirty (30) days to appropriate Pueblo officials and may extend this request for good cause if necessary. Pueblo officials to whom the case is referred will be asked to provide periodic reports if the time lines provided below in Part V. "Procedures for Children in Need of Care Petitions," are affected where a child is removed from a home. In no event shall a referral exceed six (6) months.

D. Any disposition of a case pursuant to such informal or nonjudicial resolution must be voluntarily agreed to by all parties to the proceedings. Upon agreement by all parties, the court shall enter a conference agreement and this shall have the effect of a court order. The agreement may include, but is not limited to, the following dispositions:

- (1) Release of the child to the parent or custodian with no further action and dismiss case;
- (2) Suspend the proceedings for a specified time, releasing the child, the parent, custodian or other person as the court may direct, with appropriate remedial conditions;
- (3) Order final disposition of the case, consistent with the provisions for an order following final disposition hearing.

E. Informal or nonjudicial resolution of a matter under the Children's Court shall not in any way preclude the filing of criminal charges if a crime has been committed by a party in a proceeding.

**Secs. 7-2-50—7-2-60. Reserved.**

*Part IV. DUTY TO INVESTIGATE AND REPORT ABUSE AND NEGLECT*

**Section 7-2-61. Basis of investigation and report.**

Persons who have a reasonable cause to suspect that a child has been abused or neglected shall report the suspected abuse or neglect to a Laguna agency responsible for investigating

allegations of abuse or neglect. Laguna Social Services and/or the Laguna Police Department, shall immediately investigate all allegations of abuse, abandonment and neglect, and if appropriate, proceed according to the provisions of this Code.

**Section 7-2-62. Persons required to report.**

Those persons required to report suspected abuse or neglect include any physician, nurse, dentist, optometrist, or any medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel; counselor; peace officer or other law enforcement official; judge, attorney, Children's Court Counselor, Clerk of the Children's Court or other judicial system official. Each agency shall develop its own guidelines with regard to the duty of volunteers to report suspected abuse or neglect to supervisors.

**Section 7-2-63. Other persons may report.**

Any person may make a report of suspected abuse or neglect to Laguna Social Services or Laguna Police Department.

**Section 7-2-64. Anonymity.**

Any information regarding the source of a report of a child in need of care will be kept confidential. Such reports shall not be admissible in evidence in any proceeding under this Code. Information contained in such reports shall not be admissible in any civil proceeding under this Code unless the reporter is voluntarily and personally present at the proceeding and testifies to personal knowledge of such information.

**Section 7-2-65. Immunity from liability.**

All persons or agencies reporting in good faith, known or suspected instances of abuse or neglect, are immune from civil liability and criminal prosecution.

**Secs. 7-2-66—7-2-80. Reserved.**

*Part V. CHILDREN IN NEED OF CARE—EMERGENCY PROCEDURES*

**Section 7-2-81. Reports and action on reporting.**

Upon the receipt of a report or information regarding a child who may be a child in need of care, as defined by section 7-2-82 of this part, from Laguna Police Department or any other Laguna agency, the Laguna Social Services shall investigate or cause to be investigated the circumstances surrounding the report, including the home environment of the child, a safety

and risk assessment, and physical or emotional injuries suffered by the child, and all other matters which, in the discretion of Laguna Social Services and Laguna Police Department, shall be relevant to the investigation.

- A. If from the investigation it appears that there is reasonable ground to believe that the child is a child in need of care, social services shall prepare a summary of the investigation for further action.
- B. If from the investigation it appears that the child is in need of emergency protective care as set forth in section 7-2-83 of this part, social services, with the assistance of the Laguna Police Department, if necessary, shall provide such emergency protective services.

**Section 7-2-82. Child in need of care—Defined.**

A child in need of care is defined as a child who has been found to be in one (1) or more of the following situations:

- A. *An abused child*: One who has suffered or is likely to suffer a physical injury, inflicted upon the child by other than accidental means, which causes or created a substantial risk of death, disfigurement, impairment of bodily functions or serious physical or emotional harm, as determined by appropriate medical or professional personnel. The following are examples of circumstances in which a child could be found to be an abused child, but as such are not intended to be all-inclusive:
  - (1) A child who has been beaten or suffered other unusual or inappropriate corporal punishment.
  - (2) A child who suffers injury to their psychological functioning, as determined by an appropriate professional person, as a result of psychological or other abuse.
  - (3) A child who has been subjected to obscene or indecent sexual activities as a result of pressure, guidance or approval of the child's parent or custodian.
  - (4) A child who has been a passenger in a vehicle driven by an intoxicated person, with the knowledge or approval of the child's parent or custodian.
- B. *A neglected child*: One whose parent or custodian fails to provide such food, clothing, shelter, medical attention, hygiene, education, or supervision as the child needs for development, although the parent or custodian was able to furnish such needs or has refused Laguna or other assistance for furnishing such needs, and such failure is likely to result in significant harm to the child's health or welfare, as determined by appropriate medical or professional persons.
- C. *A dependent child*: One who fits one (1) of the following categories:
  - (1) Who is without a parent, guardian, extended family or other custodian;
  - (2) Who is without a parental care and supervision because he or she has been abandoned;

- (3) Who is in need of special care and treatment required by the child's physical, mental or social condition; or
  - (4) Whose parent, guardian, extended family or other custodian for good cause requests support with care and custody of the child.
- D. Nothing in these definitions shall be used to interfere with or prohibit the cultural and spiritual development and with traditional child-raising practices of the child's family or Tribe.

**Section 7-2-83. Temporary protective care.**

A. *Authorization and duties of Laguna Police.* A Laguna Police Officer may take a child into temporary protective care under the following conditions:

- (1) Whenever a Laguna Police Officer has reasonable grounds to believe that a child is in danger of serious and imminent physical or emotional harm and that their removal of the child from the child's home residence is necessary to avoid harm, and if the court is unavailable to issue a custody order, or if the issuance of a custody order would involve a delay that would contribute to the risk of harm to the child.
- (2) Whenever a Laguna Police Officer has reasonable grounds to believe that a child, subject to a custody order issued by the Laguna Children's Court, is leaving the jurisdiction of the Children's Court or being taken from this jurisdiction without permission of the child's custodian.

B. *Procedure upon removal of a child.* Upon the removal of a child into temporary protective care, the Laguna Police Officer shall take the following steps:

- (1) *Notification.*
  - (a) Immediately notify the child's parents or custodian of such removal, and the reasons therefore. If such attempts to notify the child's parents or custodian are unsuccessful, then best efforts shall immediately be made to notify the child's nearest relatives.
  - (b) Immediately notify the social services personnel designated to take such notice of such removal.
- (2) *Placement of child.*
  - (a) If return of physical custody of the child can be accomplished without danger of harm to the child, the child shall be returned to the parents or custodian.
  - (b) If the return of the child to the child's parents or custodian is impossible or would involve continued risk of such harm to the child, then the child shall be placed in the physical custody of a responsible adult member of the child's extended family, if available and if placement can be accomplished without risk of harm to the child.

- (c) If temporary protective care as set forth, above is not available, then the child shall be placed with a secure home, family, or shelter care facility having been approved for such placement by Laguna Social Services.
- (d) A child shall not be placed in a detention facility or other environment where the child is in contact with persons in such a facility for the reason of having been accused or convicted of a crime or delinquent act, unless such a placement is determined, by a Children's Court Judge, to be necessary for the benefit of the child or to insure the child's continued presence in the area.
- (3) *Emergency medical care.* In the event that the police officer and social services determine that the child is in need of emergency medical attention, the police officer or social services personnel may contact Laguna Emergency Medical Services and/or deliver the child to a medical treatment center.
- (4) *Written report to social services.* Upon the placement of the child, the Laguna Police Officer shall make and deliver a report to social services, within eight (8) hours, containing a summary of the circumstances surrounding the temporary protective care and the basis for it.

C. Laguna Police Department and Social Services shall further specify coordination of these procedures in an interdepartmental agreement.

D. *Termination of temporary protective care.* In no case shall temporary protective care extend beyond forty-eight (48) hours or two (2) working days, exclusive of weekends and holidays. At the expiration of this period, Laguna Social Services shall:

- (1) Return the child to the child's parents or custodian; or
- (2) Bring the child before a Children's Court Judge with a petition and affidavit requesting emergency care and control of the child as provided in part VI, section 7-2-102.

**Secs. 7-2-84—7-2-100. Reserved.**

#### *Part VI. PROCEDURES FOR CHILD IN NEED OF CARE PETITIONS*

##### **Section 7-2-101. Court proceedings for a child in need of care.**

A. All court proceedings under this part shall be initiated by a petition prepared and filed by Laguna Social Services. The petition shall contain the following information:

- (1) The name and birth date of the child;
- (2) The name of the parents or custodian of the child;
- (3) The basis of the court's jurisdiction;
- (4) An allegation that the child is a child in need of care, and a plain statement of facts supporting this allegation;



- (5) Any facts relevant to the present physical or legal custody of the child;
- (6) A summary of any efforts which have been made by Laguna Social Services or others to divert the case from the court system to extended family, community leaders or advisors;
- (7) Whether temporary custody of the child is requested by Laguna Social Services, including cessation of any parental or custodian rights or appointment of a substitute custodian.

B. *Notice.* Written notice of any hearing, except a ten-day hearing, held under this part shall be given, at least five (5) days prior to the hearing date, to all parents or legal custodians of the child, and to other persons as the court may direct. A copy of the petition shall also be served no later than five (5) days prior to the hearing, by the court.

C. *Rules of procedures.* Rules of procedures and evidence, and burdens of proof, shall be as set forth in the rules of procedures for Laguna Courts, except where indicated in this part.

D. *Intervention.* Intervention into the proceedings shall be allowed as follows:

- (1) Any extended family member may submit a motion to the court, requesting permission to intervene as an interested party. Motions will be granted or denied at the discretion of the judge. Extended family members may also present themselves to the court and state why they wish to participate as interested parties. The court shall make a determination based on the best interests of the child.
- (2) Upon motion, in writing, or orally, community counselors, spiritual leaders, and other persons may be allowed to intervene as interested parties at the discretion of the court. Such persons must file a motion or present themselves to the court and state why they should be allowed to participate as interested parties. Where applicable, the court shall follow Laguna or other applicable traditions and customs regarding the involvement of such interested persons.
- (3) Notice of intervention shall be served by mail, by the clerk of the court, upon all parties to the proceedings at least five (5) days prior to the hearing. Such notice may be excused by the court if the court determines that lack of notice has not detrimentally affected the other parties. If the court finds such detrimental effect, the court may:
  - (a) Deny intervention; or
  - (b) Continue the hearing date for an appropriate time.

#### **Section 7-2-102. Ten-day emergency hearing.**

A. When Laguna Social Services files a petition for care and control within forty-eight (48) hours after a child is taken into temporary protective care, and an order is granted, the Children's Court shall set a hearing for no later than ten (10) days after Laguna Social Services files such petition. The purpose of the hearing shall be to determine whether an out of home placement should continue.

B. Laguna Social Services shall use best efforts to notify the child's parents or custodian of the time and place of the hearing, and inform the parents or custodian of their right to attend the hearing and be heard.

C. The parents or custodians of the child shall be advised of:

- (1) The nature of the allegations;
- (2) The factual basis for the allegations;
- (3) The present custodial situation;
- (4) The relief requested by Laguna Social Services;
- (5) The right to be represented by legal counsel at their own expense and the right to request a Laguna Advocate appointed at their expense or at the Pueblo's expense if the parent or custodian cannot afford representation and if an advocate is available.
- (6) The right to request an informal resolution of the proceeding. If an informal resolution is requested and consent is given in accordance with section 7-2-48 of part III of this Code, the court may suspend further proceeding pending the informal resolution.

D. At the time of the hearing, the court shall determine the appropriateness of placement of the child pending further proceedings, and may appoint a guardian ad litem for the child.

E. The hearing shall be informal in nature. The parent or custodian will be allowed to admit or deny the allegations in the petition. Parties may present evidence relating to the situation. The court shall make its determination based solely on the evidence and arguments presented at this hearing.

F. Unless the allegations are admitted, social services shall have the burden of proving, by clear and convincing evidence, that the child is a child in need of care.

G. If temporary custody is requested, Laguna Social Services shall have the burden of proving, by clear and convincing evidence, that such relief is necessary for the protection of the child.

H. Upon the conclusion of the hearing, the court shall issue a temporary order, including the following:

- (1) Its jurisdiction over the case.
- (2) Whether it has been proven that the child is a child in need of care. If the court does not so find, the petition will be dismissed.
- (3) If temporary custody is requested, whether such custody is necessary for the protection of the child. If the court does not so find, the custody of the child shall remain with or be returned to the parent or custodian.
- (4) A child who is determined by the court to be a child in need of care under part V of this Code may be adjudicated to be a ward of the court.

I. In addition, the order may direct:

- (1) That notice of the proceedings be given to additional interested parties;
- (2) That the child, parents or custodians undergo medical or psychological examinations or other related evaluations and that reports be submitted to the court;
- (3) That further investigation be conducted by social services or other agencies;
- (4) That the family or the child participate in such counseling, advice, or other program as the court may deem beneficial; and
- (5) That such other actions consistent with the purposes of this Code be taken.

**Section 7-2-103. Thirty-day review hearing for emergency petitions.**

A. No later than thirty (30) days after a petition for child in need of care is filed, the Children's Court shall hold a review hearing to assess the needs of the child and the child's family. All parties will be given an opportunity to make recommendations regarding the best interests and placement of the child.

B. The purpose of the thirty-day review hearing shall be to assess whether continuing court intervention is necessary to protect the well-being of the child.

C. The court shall follow the same procedures for noticing the hearing, informing the parties of their rights and admitting evidence as those provided for a ten-day emergency hearing, in subsection 7-2-102C. of this part.

D. If the court determines that it should retain jurisdiction over the child it shall issue a written order addressing the applicable issues set forth in subsections 7-2-102H. and I., and shall adjudge the child a ward of the court.

- (1) If the court finds that the child should not be returned to the home, the court shall issue a written order that continued removal from the home is in the best interests of the child and that either active efforts have been made to reunite the child and family or that the plan is for the child not to return home until further court order. The court must address the active efforts made to prevent or eliminate the continued need for removal.
- (2) The court shall specify in its order the necessary intervention and appropriate steps, if any, which the parent, guardian or custodian must follow to correct the underlying problem.

**Section 7-2-104. Hearings for nonemergency petitions for a child in need of care.**

A. Where a nonemergency petition for a child in need of care is filled by social services, the Children's Court shall set an initial hearing no later than thirty (30) days after the petition is filed.

B. The petition filed by social services shall contain the same information as that provided in section 7-2-101A. of this part.

C. Notice, court procedures, burdens of proof, and the manner in which an order is issued shall be the same as that provided for in a thirty-day hearing in section 7-2-103 of this part.

**Section 7-2-105. Ninety-day hearing.**

A. Within ninety (90) days after a petition, emergency or nonemergency, is filed by Laguna Social Services, the Children's Court shall hold a dispositional hearing.

B. The court shall inquire into the compliance with any temporary order issued by the court, including remedial conditions, and make any necessary dispositions.

C. Notice of the ninety-day dispositional hearing shall be given in accordance with section 7-2-101B. of this part. All interested parties may testify, and otherwise give evidence in their behalf regarding the present circumstances of the child and of the parents, custodians or possible custodians of the children.

**Section 7-2-106. Nine-month review.**

A. Within six (6) months after the ninety-day dispositional hearing, the Children's Court shall hold a review hearing to determine whether any progress has been made by the parents, extended family, and/or custodians.

B. Notice of the nine-month review shall be given in accordance with section 7-2-101B. of this part.

C. The court shall issue an order setting out the findings regarding any progress by the parents, extended family, and/or custodians, and make any necessary dispositions.

**Section 7-2-107. Final disposition hearing.**

A. No later than twelve (12) months, and earlier where possible, after a petition is filed, a final disposition hearing shall be held.

B. Notice of the final disposition hearing shall be given in accordance with section 7-2-101 of this part. All interested parties may testify, and otherwise give evidence in their behalf regarding the present circumstances of the child and of the parents, custodians, or possible custodian of the children. The court shall inquire into the compliance with any orders issued by the court, including remedial conditions.

C. The court may order any of the dispositional alternatives permissible under temporary dispositional orders or informal resolution orders. In addition, the court may order any of the following dispositions:

- (1) Temporarily suspending parental rights for a specified period of time, placing the child's legal custody for such period with Laguna Social Services and the physical custody of the child with an extended family member, foster home, shelter care home, or other appropriate person or facility.

- (2) Suspending parental rights for an indefinite period of time, placing legal custody of the child with Laguna Social Services, and the physical custody of the child as set forth in subsection C.(1), directly above.
- (3) Cessation of parental rights, and placing the child with an appropriate custodian within the child's immediate community.

D. In any of the above situations set forth in subsections C.(1)—(3), above, where there has been a suspension or cessation of parental rights, but the child has not been adopted, the child shall be considered a protected child of the Pueblo of Laguna or Ward of Court.

E. In the event that parental rights have been suspended indefinitely, the court shall order a review of the case every six (6) months to determine whether any progress has been made by the parents.

F. No suspension or cessation of parental rights may be ordered unless the court determines, by clear and convincing evidence that the continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage to the child. No cessation of parental rights may be ordered unless, in addition, the court determines that the risk of serious emotional or physical damage to the child will continue due to circumstances that are irremediable by further efforts of the court and Laguna Social Services.

G. If the court orders a cessation of parental rights, the court make the following statements and determinations:

- (1) That the court has considered the question of inheritance and that the inheritance rights of the child shall be continued, with such conditions as the court may place.
- (2) That the court has considered the question of residual rights and determines:
  - (a) That the court will effect a cessation of all the natural parents' rights to the child; or
  - (b) That the natural parent(s) may enjoy certain residual parental rights, which may include the following:
    - (i) The right to communication;
    - (ii) The right to visitation;
    - (iii) The right or obligation to contribute to support or education;
    - (iv) The right to be consulted regarding the child's religious affiliation, major medical treatment, marriage or other matter of major importance in the child's life; or
    - (v) Such other residual rights as the court may deem appropriate, considering the circumstances.

H. The court may grant similar residual rights to extended family members upon the cessation of parental rights.

I. Nothing in this Code shall prohibit a parent from a petitioning the Children's Court to restore certain residual parental rights where the court has ordered a cessation of parental rights.

**Section 7-2-108. Exceptions to final disposition.**

A. *Exception 1:* In exceptional cases, where the court is convinced that sufficient progress is being made by the parents, extended family and/or custodians, and more time would be in the best interests of the child, the court may continue the case beyond a twelve-month disposition.

B. *Exception 2:* If the court's order does not finally conclude the case, the court shall specify in its order the date for further reporting to the court, and the date for further dispositional hearing. The court shall order a review of the case at least every six (6) months to determine whether any progress has been made by the parent(s), extended family and/or custodian(s).

**Secs. 7-2-109—7-2-120. Reserved.**

*Part VII. PROCEDURES FOR GUARDIANSHIP AND CESSATION OF PARENTAL RIGHTS*

**Section 7-2-121. Duration of suspension or cessation of parental rights.**

Parental rights of a natural or adoptive parent may be severed temporarily or permanently. Upon the temporary suspension of parental rights, the person assuring the traditional parental rights of the child shall be deemed a custodian. Upon the permanent cessation of parental rights, the person assuming the traditional parental rights shall be deemed the adoptive parent.

**Section 7-2-122. Preservation of Laguna rights.**

The cessation of parental rights shall not adversely affect the child's rights and privileges as an Indian, nor as a member of any Tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Pueblo of Laguna, nor shall it interfere with the child's cultural, traditional, or spiritual growth as a member of the Pueblo of Laguna.

**Section 7-2-123. Petition for voluntary guardianship.**

A. *Petition for guardianship.* The process for creation of a voluntary guardianship shall be initiated by the filing of a petition entitled "Petition for Guardianship". The petition shall be filed in the name of a parent having custody of the child or a proposed custodian. The petition shall contain the following information:

- (1) The name, age and residence of each living parent of the child;
- (2) The name, age and residence of the child;
- (3) The name, age and residence of the proposed custodian or custodians;

- (4) The jurisdictional basis of the Laguna Children's Court over the matter;
- (5) A statement of the facts indicating that the guardianship is in the best interests of the child;
- (6) The duration of the proposed guardianship, and whether such is to be of a definite or indefinite duration;
- (7) Whether the guardianship is consented to by each living parent of the child, and, if not, any facts excusing such consent, including any facts related to the physical care or custody of the child, past or present, which may be relevant to the petition.

B. *Consent.* The written and notarized consent of each parent consenting to the guardianship shall be filed with the petition. Such consents shall be executed before an adult witness. Such consents shall not be invalidated by reason of the minority of the consenting parent.

C. *Investigation.* Upon the filing of a petition, the Children's Court may order such investigation, by Laguna Social Services or other agency, as it deems necessary for a full determination upon the petition.

D. *Summary order.* If the Children's Court determines that the proposed custodian is a member of the child's extended family, clan or community, or otherwise has significant ties to the child, and that the guardianship has been consented to by each living parent of the child, and that the guardianship is in the best interests of the child, the Children's Court may enter a summary order of guardianship as requested in the petition.

E. *Notice.* If the guardianship has not been contested to in writing by each living parent of the child, then each such parent not having consented shall be given written notice of the proceedings, including the date of hearing upon the petition and a copy of the petition. Such notice shall be served personally where the whereabouts of the parent is known and such service is practicable, otherwise service shall be made as ordered by the Children's Court by the most effective means and consistent with the due process rights of the parent.

F. *Hearing.* Unless the guardianship is granted by summary order, the Children's Court shall hold a hearing upon the petition and shall determine if the guardianship is in the best interests of the child. If a nonconsenting parent appears at the hearing and contests the guardianship, the petition shall be denied unless the Children's Court determines, upon clear and convincing evidence, that the guardianship is in the best interests of the child, and the nonconsenting parent is unable to furnish a home for the child which is more beneficial to the needs and the normal development of the child than the home of the proposed custodian.

G. *Order.* Upon a determination that the petition should be granted, the Children's Court shall enter an order of guardianship. Such order shall contain the following:

- (1) The jurisdictional basis of the Children's Court;
- (2) The name of the custodian or custodian;
- (3) The duration of the guardianship; whether of definite or indefinite duration;

- (4) A factual finding that the guardianship is in the best interests of the child and the reasons therefor;
- (5) Any specific conditions of guardianship, including rights of the parents.

H. *Termination of guardianship.* The guardianship shall terminate upon any of the following:

- (1) The duration specified in the order; or
- (2) The further order of the Children's Court, terminating guardianship, or the death of the custodian or other circumstances creating a practical inability of the custodian to care for the child.
- (3) Upon termination of the guardianship, all legal parental rights shall be reinstated to the person or persons having such rights prior to the creation of the guardianship.

I. *Informal guardianship.* An informal guardianship or traditional guardianship may be created by the placement of a child by a natural parent or parents with another person or family, without Children's Court proceedings.

- (1) *Creation of informal guardianship.* Such a guardianship must be voluntarily entered into the natural parent or parents involved and the custodian, and shall be recognized as legal guardianship for so long as the consensual relationship continues.
- (2) *Rights of nonconsenting parent.* No informal guardianship may be created over the objections of a natural parent having custody or joint custody of the child. A natural parent who does not have custody of the child, and who has not consented to such a traditional guardianship may petition the Children's Court for denial of the informal or traditional guardianship, for custody of the child, or for such other appropriate relief as the parent believes is in the best interest of the child.
- (3) *Hearing upon petition.* Upon the filing of such a petition, by a nonconsenting parent, the Children's Court may order an investigation and shall hold a hearing in accordance with subsection F. above, and the matter shall thereafter be determined in accordance with the procedures for determination of a formal guardianship petition.
- (4) *Termination of informal guardianship.* After the creation of a traditional guardianship, if the natural parent or parents consenting to the guardianship shall elect to terminate the guardianship and request the return of the child. Such request shall be granted by the custodian and the child shall be returned to the parent or parents so requesting. If the custodian does not believe that the termination of the guardianship status is in the best interest of the child, the custodian may, in the alternative, file or cause to be filed, a petition asking that the child be declared a child in need of care under part VI of this Code.

#### **Section 7-2-124. Adoption.**

A. *Adoption.* An adoption may be accomplished either involuntarily or voluntarily.

- (1) *Involuntary.* An involuntary adoption may only be accomplished upon a cessation of parental rights under part VI of this Code, and a further hearing under subsection B.5. of this section to determine whether the proposed adoption is in the best interests of the child.



- (2) *Voluntary.* A voluntary adoption may be accomplished by formal Children's Court process of informally.

B. *Petition.* The process for a voluntary adoption shall be initiated by the filing of a petition entitled "Petition for Adoption". The petition shall be filed in the name of the proposed adoptive parent and shall contain the following information:

- (1) The name, age and residence of each living parent of the child;
- (2) The name, age, date of birth and residence of the child, and the Laguna affiliation of the child;
- (3) The name, age and residence of the proposed adoptive parent or parents;
- (4) The basis of the Children's Court's jurisdiction over the adoption of such child;
- (5) Whether the adoption is consented to by each living parent of the child, and, if not, any facts excusing such consent;
- (6) A full statement of the value of any property of the child, or of which the child is expected to become entitled after the adoption;
- (7) Any facts related to the physical care or custody of the child either present or past, which is relevant to the petition;
- (8) Any facts relative to the adoptive parent's ability to provide for cultural, traditional and spiritual development of the child.

C. *Consent.* Such consents must be executed in writing and recorded before a judge and accompanied by the judge's certificate that the terms and consequences of consent were fully explained in detail and were fully understood by the parent or Indian custodian. The Children's Court shall also certify that either the parent or custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten (10) days after birth of the child shall not be valid.

D. *Withdrawal of consent.* A consent executed by a parent may be withdrawn, for any reason, at any time prior to a final order of adoption. A consent executed by an adult may be withdrawn, in the discretion of the Children's Court, upon a showing that such a withdrawal is in the best interest of the child, at any time prior to final order of adoption. After entry of a final decree, a parent may withdraw consent thereto if consent was obtained through fraud or duress and the parent may petition the Children's Court to vacate the decree.

E. *Investigation.* Upon the filing of a petition for adoption, the Children's Court shall order such investigation as it deems necessary for a full determination upon the petition.

F. *Summary order.* The Children's Court may enter a summary order of adoption if it is requested in the petition, provided the Children's Court, upon investigation and inquiry, determines as follows:

- (1) That one (1) of the proposed adoptive parents is a member of the child's extended family or community, or otherwise has significant ties to the child;

- (2) That the adoption has been consented to by each living parent of the child;
- (3) That the proposed adoptive home is an adequate environment for the development of the child;
- (4) That the proposed adoptive parents can provide the child with the unique values of Laguna or other Indigenous culture; and
- (5) That the adoption is in the best interests of the child.

G. *Notice.* If the adoption has not been consented to in writing by each living parent of the child, then each such parent not having consented shall be given written notice of the proceedings, including the date of the hearing upon the petition and a copy of the petition. Such notice shall be served personally whenever the whereabouts of the parent or parents is known and such service is practicable, otherwise service shall be made as ordered by the Children's Court by the most effective means and consistent with the due process rights of the parent or parents.

**Secs. 7-2-125—7-2-140. Reserved.**

*Part VIII. PROCEDURES FOR TRANSFER OF INDIAN CHILD WELFARE ACT CASES  
AND RECOGNITION OF NON-LAGUNA COURT ORDERS*

**Section 7-2-141. Procedures for transfer from state court.**

A. *Receipt of notice.* The Pueblo of Laguna agent for service of state court or agency child custody proceedings as defined by the Indian Child Welfare Act (ICWA), shall be Laguna Social Services.

B. *Investigation and pre-report.* Laguna Social Services shall conduct an investigation and file a written report with the Children's Court setting forth eligibility for transfer, results of the investigation and recommendations as to transfer within five (5) days of receipt from a state court or agency.

C. *Acceptance to transfer.* The Children's Court will notify the state of its decision on the proposed transfer within thirty (30) days of receiving the Laguna Social Services report.

D. *Hearing(s).* Upon receipt of transfer jurisdiction from state court, Laguna Social Services shall file an ICWA petition and appropriate hearing(s) shall be held in accordance with this Code.

**Section 7-2-142. Intervention in other court proceedings.**

Laguna Social Services is authorized to intervene on behalf of the Pueblo of Laguna in any state, federal or international court child custody proceedings, as defined by the Indian Child Welfare Act.

**Section 7-2-143. Notification from other Pueblo of Laguna Courts.**

When allegations of abuse or neglect of a child subjects to Children's Court jurisdiction arise in any other court of the Pueblo of Laguna, the other court must immediately notify Laguna Department of Social Services and the Children's Court.

**Section 7-2-144. Recognition of other court orders.**

A. *State court orders.* State child custody orders involving children over whom the Children's Court could take jurisdiction may be recognized by the court only after the court conducts an independent review of such state proceedings to determine the following:

- (1) Whether the state court had jurisdiction over the child; and
- (2) Whether the provisions of the Indian Child Welfare Act were properly followed; and
- (3) Whether due process was provided to all interested persons participating in the state proceeding; and
- (4) Whether the state court proceeding violates the laws, public policies, customs or common law of the Pueblo of Laguna.

B. *Court orders of other Tribal Courts.* Court orders of other Tribal Courts involving children over whom the Children's Court could take jurisdiction may be recognized by the court after it has determined the following:

- (1) Whether the other Tribal Court exercised proper subject matter jurisdiction and personal jurisdiction over the parties; and
- (2) Whether due process was accorded to all interested parties participating in the other Tribal Court proceeding; and
- (3) Whether the Tribal Court proceeding violated the laws, public policies, customs or common law of the Pueblo of Laguna.

C. *Orders for protection from other jurisdictions.* The Courts of the Pueblo of Laguna shall recognize and exercise comity with regard to all orders for protection from other jurisdictions unless such orders violate the constitution or laws of the Pueblo of Laguna. In the event a conflict of laws exists as to a part of the order of protection, the court will effectuate such parts of the order of protection which are not in conflict with the Constitution and laws of the Pueblo of Laguna.

D. *Annual reports.* The Laguna Council shall be furnished with an annual report from the Children's Court on all actions taken under delegation of authority to the court.

**Secs. 7-2-145—7-2-160. Reserved.**

*Part IX. ESTABLISHMENT OF PARENTAGE AND SUPPORT*

**Section 7-2-161. Child's right to support.**

The parents are jointly liable for the support of the child until the child reaches eighteen (18) years of age, is emancipated, or the court has ordered a cessation of parental rights, notwithstanding the child's parents have never been married to each other.

**Section 7-2-162. Establishing parentage.**

The parentage of a child may be established by:

- A. A written acknowledgment by a parent that he is the father of or she is the mother of the child, and which is filed with the Children's Court; or
- B. A judicial determination by the Children's Court.

**Section 7-2-163. Proceedings to establish parentage and compel support.**

*A. When and by whom proceedings may be filed.*

- (1) Proceedings to establish parentage may be brought in the Children's Court any time before the child is eighteen (18) years of age by a parent or the child acting through a guardian if the complainant parent dies or becomes disabled or by the Pueblo; and
- (2) Proceedings to compel support from a parent may be brought in the Children's Court at any time until a child reaches the age of eighteen (18) or becomes an adult through emancipation or marriage, and shall be brought by a complaining parent, by the child if the complainant dies or becomes disabled or by the Pueblo. Proceedings on behalf of a child may be brought by the custodian of the child.

*B. Form of petition; summons; procedures.*

- (1) The petition shall be in the form approved by the Children's Court and shall charge the person named as respondent with being the father or mother of the child and demand that such person be compelled to support the child;
- (2) A summons shall be issued and served as in other actions in this Code, as provided in Part III.
- (3) Notice and procedures shall be the same as that of other actions in this Code, as provided in Part III.

*C. Evidence for determination of parentage.* In actions for determination of parentage, the court shall consider evidence of parentage including, but not limited to, DNA test results, testimony of the alleged father and birth and baptismal certificates.

*D. Orders.* The court shall enter its order determining the child's parentage and support, if any, at the conclusion of the hearing.

E. *Start of proceedings.* Proceedings may be started before the birth of the child, but, unless the alleged father consents, trial will not be held until at least fifteen (15) days after the birth of the child.

**Section 7-2-164. Rights of a child once parentage is established.**

After the parentage of a child is established, the child has the same rights of inheritance from the person who is established as a parent that a child born as a result of a lawful marriage has under Laguna law and custom.

**Secs. 7-2-165—7-2-180. Reserved.**

*Part X. EMANCIPATION*

**Section 7-2-181. Petition for emancipation.**

A. A child sixteen (16) years of age or older may petition the court, individually or through social services, a guardian or other custodian, for emancipation. The decision shall be made by a clear and convincing standard.

B. The petition shall be in the form approved by the Children's Court and request that the petitioner be emancipated.

**Section 7-2-182. Evidence for the determination of emancipated status.**

Evidence for the determination of emancipated statute shall include, but is not limited to:

- (a) The real or apparent assent of the child's parent(s);
- (b) Demonstration of the child's independence from their parents in matter of care, custody, and earnings through employment of other means provides for their own food, shelter and other cost-of-living expenses;
- (c) Proof the child has sole responsibility for their own support; or
- (d) Any other evidence the court finds relevant to make an emancipation determination.

**Section 7-2-183. Notice and procedures.**

Notice and procedures shall be the same as that provided for other actions in this Code, as provided in Part III.

**Section 7-2-184. Rights of child upon emancipation.**

Upon determination of emancipation by a court order, a child is entitled to all roles and responsibilities of adult members of the Pueblo of Laguna.

**Secs. 7-2-185—7-2-200. Reserved.**

*Part XI. PETITIONS FOR RE-HEARING; MODIFICATION OF AN ORDER; APPEALS*

**Section 7-2-201. Grounds for re-hearing.**

A parent, guardian or custodian of any child whose status has been adjudged in a proceeding under this Code, or any adult affected by an order or judgment in a proceeding under this Code, may within one (1) year petition the Children's Court for a new hearing on the grounds that new evidence which was not known or could not with due diligence have been made available at the original hearing and which might affect the order or judgment, has been discovered. If it appears to the Children's Court that there is such new evidence which might affect its order or judgment, it shall order a new hearing and enter such order or judgment and make such disposition of the case as is warranted by all the facts and circumstances and the best interest of the child.

**Section 7-2-202. Modification, revocation or extension of an order.**

A. The Children's Court with cause may modify, revoke, or extend an order at any time upon the motion of the following:

- (1) The child and their attorney;
- (2) The child's parent, guardian, or custodian, and his or her legal representative if appropriate;
- (3) Laguna Social Services.

B. A hearing to modify, revoke or extend a Children's Court order shall be conducted according to the rules of the Children's Court.

**Section 7-2-203. Appeals.**

A. Parent, guardian or custodian of any child whose status has been adjudged in a proceeding under this Code, or any adult affected by an order or judgment in a proceeding under this Code may appeal a final order affecting the aggrieved person, including, but not limited to, an order determining parentage and support, or an order adjudging a child to be in need to care, abused, dependent or neglected or emancipated.

B. The appeal shall be taken to the Pueblo of Laguna Court of Appeals within thirty (30) days of the filing of the order of the court. The Clerk of the Court shall notify the person having custody of the child of the appeal. Failure to notify the person having custody of the child does not affect the jurisdiction of the court of appeals. The order of the Children's Court shall stand, pending the determination of the appeal, but the court of appeals may, in its discretion and upon application, stay the order.

C. The appeal from the Children's Court is taken to the Court of Appeals of the Pueblo of Laguna and shall be based on questions of law only. This shall include Laguna customary and traditional law. The procedure on the appeal shall be as prescribed in the rules of the court.

**Secs. 7-2-204—7-2-220. Reserved.**

*Part XII. LOCAL CHILD PROTECTION TEAM***Section 7-2-221. Establishment.**

There shall be established a local child protection team, to be advisory in nature, and designed to promote cooperation, communication, and consistency among agencies as they ensure the safety and protection of children. It is not intended to replace the authority and responsibility of any agencies that address issues of child welfare or the Children's Court, but shall facilitate the decision making process.

**Section 7-2-222. Composition of child protection team.**

A. There shall be a core child protection team which shall be composed of the following:

- (1) Laguna Department of Social Services;
- (2) Laguna Police Department;
- (3) Pueblo of Laguna Courts;
- (4) Educational institutions within the Pueblo of Laguna;
- (5) Medical agencies that serve the Pueblo of Laguna.

B. Additionally, the child protection team may be composed of the following members:

- (1) Laguna Service Center;
- (2) Laguna Family Services;
- (3) Laguna Head Start;
- (4) Community Health Representative (CHR);
- (5) IHS Public Health Nurses;
- (6) IHS Social Services/Mental Health;
- (7) ACL Substance Abuse Department;
- (8) Laguna Tribal Council, ex-officio member;
- (9) Bureau of Indian Affairs Investigator.

**Section 7-2-223. The child protection team may facilitate provision of services in the following manner.**

A. Provide recommendations to assure services for children in culturally relevant Laguna homes.

B. Provide recommendations on a forum for discussion what actions would be promote the well-being of children.

C. Provide recommendations to assist in identifying potential foster homes.

D. Provide recommendations on available community resources, programs and services.

E. Provide recommendations to various pertinent agencies.

F. Promote cooperation, communication and consistency among agencies involved in child placement.

G. Develop strategies to address provision of effective and efficient preventive, protective and corrective child abuse and neglect services.

H. Address situations which prompt reporting responsibility and/or preventative action.

**Section 7-2-224. CPT meetings.**

The child protection team shall conduct meetings according to approved bylaws and procedures, which shall include provisions on maintaining confidentiality.

**Secs. 7-2-225—7-2-240. Reserved.**

**ARTICLE II. JUVENILE DELINQUENCY**

***PART I. JURISDICTION OF CHILDREN'S COURT IN JUVENILE CODE MATTERS***

**Section 7-2-241. Pueblo of Laguna Children's Court.**

A. *Original jurisdiction.* The Pueblo of Laguna Children's Court has original jurisdiction over all proceedings established in this Code in which an Indian child residing in or domiciled on the Reservation is:

- (1) Alleged to be a "juvenile offender" as defined in article I, part I section 7-2-3 of this Code, unless the Children's Court transfers jurisdiction to the Tribal Court according to article II, part I section 7-2-242 of this Code.

B. *Jurisdiction until the age of majority.* For purposes of proceedings and disposition under this Code, the Children's Court may retain jurisdiction over a juvenile offender until they reach eighteen (18) years of age, or, if the juvenile has not completed high school of the General Education Diploma (G.E.D.), until they reach twenty-one (21) years of age.

C. *Transfer from other courts.* The Children's Court may accept or decline transfers from states or other Tribal Courts involving alleged delinquent children or alleged status offenders for the purposes of adjudication and/or disposition.

D. *Continuing jurisdiction.* The Children's Court may exercise continuing jurisdiction to further the best interest of juveniles and their families who, while subject to the Children's Court jurisdiction, leave the exterior boundaries of the Pueblo of Laguna.

D. *Jurisdiction over extended family.* The Children's Court shall have jurisdiction over any adult who is a member of the child's extended family, whose behavior causes or tends to cause the child to come within the jurisdiction of the court. Such person shall be provided notice and opportunity for hearing.



**Section 7-2-242. Transfer to Tribal Court from Children's Court.**

A. *Transfer petition.* The prosecutor may file a petition requesting the Children's Court to transfer the child to the jurisdiction of the Tribal Court, within fourteen (14) calendar days of the initial presentment if the child is thirteen (13) years of age or older and is alleged to have committed an act which would have been considered a misdemeanor if committed by an adult.

B. *Transfer hearing.* The Children's Court shall conduct a hearing to determine whether jurisdiction of the child should be transferred to Tribal Court. The transfer hearing shall be held within ten (10) days of receipt of the petition by the court. Written notice of the time, place and purpose of the hearing is to be given to the child and the child's parent, guardian or custodian at least three (3) days before the hearing. At the commencement of the hearing, the court shall notify the child and the child's parent, guardian or custodian of their rights under this Code.

C. *Deciding factors in transfer hearing.* The following factors shall be considered when determining whether to transfer jurisdiction of the child to Tribal Court:

- (1) The nature and seriousness of the offense with which the child is charged;
- (2) The nature and condition of the child, as evidenced by their age, mental and physical condition; and
- (3) The past record of offenses.

D. *Standard of proof in transfer hearing.* The Children's Court may transfer jurisdiction of the child to Tribal Court only if the court finds clear and convincing evidence that both of the following circumstances exist:

- (1) There are no reasonable prospects for rehabilitating the child through services available to the Children's Court; and
- (2) The offense(s) allegedly committed by the child reflects a pattern of conduct which constitutes a substantial danger to the public.

E. *Prehearing report in transfer proceedings.* At least three (3) days prior to the transfer hearing, the petitioner shall prepare a pre-hearing report for the Children's Court and make copies of that report available to the child and the child's advocate, parent, guardian or custodian. The prehearing report shall address the issues described in article II, part I subsections 7-2-242C., D.

F. *Written transfer order.* A child may be transferred to Tribal Court only if the Children's Court issues a written order after the conclusion of the transfer hearing which contains specific findings and reasons for the transfer in accordance with article II, part I subsections 7-2-242C., D. This written order terminates the jurisdiction of the Children's Court over the child with respect to the juvenile offense(s) alleged in the petition. No child shall be prosecuted in the Tribal Court for a criminal offense unless the case has been transferred to Tribal Court as provided in this chapter.

**Section 7-2-243. Children's Court procedure in Juvenile Code matters.**

A. *Noncriminal proceedings.* No adjudication upon the status of any child in the jurisdiction of the Children's Court shall be deemed criminal or be deemed a conviction of a crime unless the Children's Court transfers jurisdiction to the Tribal Court according to part II, section 7-2-242 of this Code.

B. *Use in other proceedings.* The adjudication, disposition and evidence presented before the Children's Court shall be inadmissible as evidence against the child in any proceeding in another court, including the Tribal Court.

C. *Rules of procedure.* Proceedings under this Code shall be governed by the rules of procedure for the Tribal Court and Children's Court which are not in conflict with this Code. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses and other persons requested by the parties or the court shall be admitted.

**Section 7-2-244. Relation with other agencies.**

A. *Cooperation and grants.* The Children's Court is authorized to cooperate fully with any federal, state, Tribal and public or private agency in order to participate in any diversion, rehabilitation, or training program(s) and to receive grants-in-aid to carry out the purposes of this Code. Where required by Tribal policy, this authority is subject to the approval of the Tribal Council.

B. *Pueblo of Laguna Social Services.* The Children's Court shall utilize such social services as may be furnished by any Tribal, federal, or state agency, provided that it is economically administered without unnecessary duplication and expense.

C. *Contracts.* The Children's Court may negotiate contracts with Tribal, federal or state agencies and/or departments on behalf of the Pueblo for the care and placement of children whose status is adjudicated by the Children's Court subject, to the approval of the Tribal Council where so required by Tribal policy.

**Secs. 7-2-245—7-2-260. Reserved.**

*PART II. JUVENILE CODE PERSONNEL*

**Section 7-2-261. Judge.**

The same provisions that govern the Pueblo of Laguna Children's Court Judge in article I, part II section 7-2-23 of this Code shall apply in the cases of juvenile delinquency.

**Section 7-2-262. Juvenile probation officer(s).**

A. *Appointment.* The Pueblo shall retain juvenile probation officer(s) to carry out the duties and responsibilities set forth in this Code.

*B. Resource development.* The juvenile probation officer shall identify and develop resources on the Reservation, in conjunction with the Children's Court and the Pueblo Council, to enhance each child's potential as a viable member of the community.

*C. Duties of a juvenile probation officer.*

- (1) Conduct investigations as provided in this Code or as directed by the court;
- (2) File reports to the court as provided in this Code or as directed by the Children's Court;
- (3) Conduct informal adjustments, as provided in article II, part VII section 7-2-332;
- (4) Make necessary referrals for counseling services;
- (5) Perform other duties in connection with the care, custody or transportation of children as the court may require;
- (6) Act as a liaison between the Children's Court and educational institutions.

**Section 7-2-263. Juvenile prosecutor.**

*A. Appointment.* The Pueblo shall retain a juvenile prosecutor(s) to carry out the duties and responsibilities set forth in this Code.

*B. Duties of juvenile prosecutor.* Under the direct supervision of the prosecutor, the juvenile prosecutor shall:

- (1) File petitions with the court as provided in this Code;
- (2) Represent the Pueblo of Laguna in all proceedings under this Code; and
- (3) Perform such other duties as the court may order.

**Section 7-2-264. Additional court personnel.**

The court may set qualifications and appoint additional Children's Court personnel such as guardians ad litem, court appointed special advocates (CASAs), juvenile advocates, and/or mediators whenever the court decides that it is appropriate to do so.

**Secs. 7-2-265—7-2-280. Reserved.**

*PART III. STATUS OFFENSES*

**Section 7-2-281. Status offenses.**

*A. Curfew.* No child under the age of sixteen (16) shall be outdoors, unaccompanied by an adult, after 10:00 p.m. during school hours and 11:00 p.m. during summer hours.

*Sentence* — Any child found to be in violation of this offense, shall pay a fine that shall not to exceed one hundred fifty dollars (\$150.00) or perform up to thirty (30) hours of community service or both. Any juvenile offender who is found to be in violation of this offense three (3)

or more times may be subject to incarceration not to exceed fifteen (15) days in addition to the maximum of a one hundred fifty dollar (\$150.00) fine, thirty (30) hours of community service, and subject to juvenile probation not to exceed six (6) months.

B. *Runaway.* It is a violation for an unemancipated child, or any other person subject to this Code, to runaway and is reported missing because their whereabouts are unknown to the child's parent(s), legal guardian or custodian.

*Sentence* — Any child, or person subject to this Code, as identified by authorities, shall be returned to the child's parent, legal guardian or custodian unless there is reasonable cause to believe that the child has experienced physical or sexual abuse. The child in violation of this offense shall perform community service not to exceed fifty (50) hours. The child shall be ordered to undergo a mental and physical health evaluation and to follow all recommendations. The court at its discretion may impose any identifiable costs for safe recovery of the child, to the child and their parents.

C. *Under the influence.* No child, or any other person subject to this Code, shall be under the influence of a legal or illegal intoxicant.

An intoxicant is defined as alcohol, any controlled substance as defined in Chapter 7 of the Laguna Criminal Code (2 PLCC Ch. 7 §§ 2.107 — 2.111 (1999)), or any other substance that diminishes the ability to act with full mental and physical capabilities because of the ingesting, inhaling or injecting of such substance.

The legal presumption of being under the influence of alcohol shall be 0.02 recorded on any breath or blood alcohol test. However, any corroborating evidence collected by a peace officer that can prove a child under the influence of alcohol to the slightest degree can be grounds for finding a child in violation of this offense.

*Sentence* — Any child, or person subject to this Code, shall be subject to incarceration not to exceed fifteen (15) days jail, a three hundred dollar (\$300.00) fine, or both. In addition, the court may order community service not to exceed fifty (50) hours of service and juvenile probation not to exceed four (4) months.

If any child, or person subject to this Code, is found to be in violation of this offense three (3) or more times, the court shall impose, in addition to the maximum penalties, a mandatory alcohol or substance abuse assessment for the purposes of placing the offender into out-patient counseling and treatment, short-term, in-patient treatment, or long-term, in-patient treatment.

D. *Use, procurement or possession of intoxicant.* No child, or person under this Code, shall use, consume, procure or attempt to procure or be in possession of an intoxicant except pursuant to a prescription for the use of such intoxicant.

*Sentence* — Any child, or person under this Code, shall be subject to incarceration not to exceed fifteen (15) days jail, a three hundred dollar (\$300.00) fine, or both. In addition, the court may order community service not to exceed fifty (50) hours of service and juvenile probation not to exceed four (4) months.

If any child, or person subject to this Code, is found to be in violation of this offense three (3) or more time, the court shall impose, in addition to the maximum penalties, a mandatory alcohol or substance abuse assessment for the purposes of placing the offender into out-patient counseling and treatment, short-term, in-patient treatment, or long-term, in-patient counseling and treatment.

*E. Falsely representing age; possession of false identification.* No child shall falsely represent their age for any purposes, nor shall they have in their possession any falsified identification illegally obtained for the purposes of misrepresenting their true age for any purposes.

*Sentence* — Any child, or person under this Code, shall be subject to incarceration not to exceed twenty (20) days jail, a five hundred dollar (\$500.00) fine, or both. In addition, the court may order community service not to exceed one hundred (100) hours of community service and juvenile probation not to exceed eight (8) months.

*F. Defacing public or private property; graffiti prohibited.* No child, or any other person under this Code, shall not deface any public or private property by using any paint produced in any form or any other substance that leaves a permanent mark, nor shall graffiti be permitted without express authorization from Tribal Council.

*Sentence* — Any child, or person under this Code, shall be subject to incarceration not to exceed ten (10) days in jail or a one hundred fifty dollar (\$150.00) fine or both. In addition, the court may order community service not to exceed fifty (50) hours of service and juvenile probation not to exceed four (4) months.

*G. Bullying.* No child, or any person under this Code, shall or attempt to, cause distress upon another upon one (1) or more students through any written or verbal expression, or physical act, threat or gesture, or any intentional display of force, or a pattern thereof, intended to intimidate, terrorize, or give the victim reason to believe they were in fear of expecting immediate bodily harm. This prohibited behavior can occur not only on any school campus within the exterior boundaries of the Pueblo of Laguna, but also any public place where children may congregate.

*Sentence* — Any child, or person under this Code, shall be subject to incarceration not to exceed twenty (20) days in jail or a one hundred fifty dollar (\$150.00) fine or both. In addition, the court may order community service not to exceed fifty (50) hours of service and juvenile probation not to exceed four (4) months.

**Secs. 7-2-282—7-2-290. Reserved.**

#### *PART IV. RIGHTS OF PARTIES IN JUVENILE PROCEEDINGS*

A child subject to the provisions of this Code is entitled to the same basic rights as an adult, except as otherwise provided in this Code and the Pueblo of Laguna Children's Code.

**Section 7-2-291. Enumerated rights of children in juvenile delinquency and adjudicatory proceedings.**

A. *Privilege against self-incrimination.* A child alleged to be a juvenile offender shall from the time of being taken into custody be accorded and advised of the privilege against self-incrimination and from the time the child is taken into custody shall not be questioned except to determine identity, to determine the name(s) of the child's parent or legal custodian, or to conduct medical assessment or treatment for alcohol or substance abuse under part VI, subsection 7-2-321C. of this Code, when the child's health and well-being are in serious jeopardy.

B. *Fingerprinting and photographs.* A child in custody shall not be fingerprinted, nor photographed for criminal identification purposes except by order of the Children's Court. If an order of the Children's Court is given, the fingerprints or photographs shall be used only as specified by the court.

C. *Right to retain counsel.* In juvenile offender cases, the child and their parent, guardian or custodian shall be advised by the court or its representative that the child may be represented by counsel at all stages of the proceedings. After due notice to the parent, guardian or custodian and after a hearing determining indigency, the court may appoint counsel for the child.

D. *No right to jury trial; no right to bail.* A child alleged to be a juvenile offender is not entitled to a trial by a jury, nor is the child entitled to post bail.

E. *Explanation of additional rights.* At the first appearance before the Children's Court, a child alleged to be a juvenile offender and the child's parent, guardian or custodian shall be informed by the court of the following additional rights:

1. The allegations against the child;
2. The right to remain silent and that any statement made by the child may be used against the child; the child has the right not to testify on their own behalf;
3. The right to cross-examine witnesses;
4. The right to subpoena witnesses and to introduce evidence on the child's own behalf;
5. The consequences if the allegations in the petition are found to be true;
6. The right to be free from double jeopardy;
7. The right to appeal any decision ordered by the Children's Court.

**Secs. 7-2-292—7-2-300. Reserved.**

*PART V. JUVENILE OFFENDER DETAINMENT***Section 7-2-301. Taking a child into custody.**

A law enforcement officer may take a child into custody for an alleged delinquent violation of the Laguna Criminal Code or status offense when:

- A. The child commits a juvenile offense in the presence of the officer; or
- B. The officer has a reasonable suspicion to believe a juvenile offense has been committed by the child being detained; or
- C. An appropriate custody order or warrant has been issued by the court authorizing the taking of a particular child.

**Section 7-2-302. Provision of rights.**

At the time the child is taken into custody as an alleged juvenile offender, the arresting officer verbally state the rights the child is afforded through this Code, to not only the child being detained but to the parents at the time of the arrest. The arresting officer may provide a copy of the rights for the child and his parents to review. The provision of rights will constitute a warning to the child and his parents that any conduct after an arrest is made may be used against the child for purposes of proving any allegation against the child to be true.

**Section 7-2-303. Release or delivery from custody.**

After a peace officer takes a child into custody and notifies the child of their rights prior to questioning, the peace officer shall do one (1) of the following:

- A. Release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate. If the peace officer chooses to file a complaint against the child, the officer may still choose to release the child to the parent, guardian or custodian and issue a citation to the child and request the court to serve a summons to have the child appear in court; or
- B. Release the child to a relative or other responsible adult Tribal member if the child's parent, guardian or custodian consents to the release. (If the child is ten (10) years of age or older, the child and their parent, guardian or custodian must both consent to the release.) If the peace officer chooses to file a complaint against the child, the officer may still choose to release the child to a relative or other responsible and issue a citation to the child and request the court serve a summons to have the child appear in court; or
- C. Deliver the child to a juvenile detention center or juvenile shelter via Tribal transport, and state the reasons to the child for the detainment; or
- D. Deliver the child to a medical facility if the child is believed to need prompt medical treatment, or is under the influence of alcohol or other chemical substances that may cause a substantial risk to the child's health and welfare. If the peace officer chooses

to file a complaint against the child, the officer may still choose to release the child to the parent, guardian or custodian and issue a summons to have the child appear in court after the child has been seen by the appropriate health care provider.

**Section 7-2-304. Review by juvenile probation officer or juvenile facility.**

The juvenile prosecutor or juvenile probation officer shall, immediately upon delivery of the child for custody, review the need for continued custody and may release the child to their parent, guardian or custodian in order to appear at the hearing on a date to be set by the court, unless:

- A. The act is serious enough to warrant continued detention; and
- B. There is reasonable suspicion to believe the child has committed the offense(s) alleged; and
- C. There is reasonable cause to believe the child will run away so that the child will be unavailable for further proceedings; or
- D. There is reasonable cause to believe that the child will commit a serious act causing damage to person or property.

**Section 7-2-305. Notification of family.**

If a child is taken into custody and not released, the peace officer taking the child into custody shall immediately attempt to notify the child's parent, guardian, or custodian. All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason for taking the child into custody and any continued custody. Thereafter, such reasonable efforts shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent. If notification cannot be provided to the child's parent, guardian, or custodian, the notice shall be given to a member of the extended family of the parent, guardian or custodian and to the child's extended family.

**Section 7-2-306. Criteria for selecting juvenile facility.**

If the juvenile prosecutor or juvenile probation officer determines that there is a need for continued custody of the child in accordance with section 7-2-304 of this Code, then the following criteria shall be used to determine the appropriate juvenile facility for the child:

- A. *Secure juvenile detention facility placement.* A child may be detained in a secure juvenile detention facility as designated by the court only if one (1) or more of the following conditions are met:
  - (1) The child is a fugitive from another jurisdiction wanted for a felony offense; or
  - (2) The child is charged with murder, sexual assault or a crime of violence with a deadly weapon, or any other offense which has resulted in a serious bodily injury to the alleged victim; or



- (3) The child is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel while resisting arrest or detention; or
  - (4) The child is charged with committing one (1) of the following acts which would be an offense if the child were an adult; vehicular homicide, abduction, rape, arson, burglary or robbery; or
  - (5) The child is already detained or on conditioned release for another juvenile offense; or
  - (6) The child has a demonstrable record of willful failures to appear at Children's Court proceedings within the last twelve (12) months; or
  - (7) The child has previously escaped from detention or has made an attempt to escape detention; or
  - (8) The child requests in writing that they be given protection by being confined in a secure confinement area and there is a present and immediate threat of serious physical injury to the child making the request.
- B. *Shelter care facility.* A child may be housed in a shelter care facility as designated by the court only if one (1) of the following conditions exist:
- (1) The child is unwilling to return home or to the home of an extended family member; or
  - (2) The child's parent, guardian, custodian or an extended family member is unavailable, unwilling or unable to permit the child to return to their home; or
  - (3) There is an evident and immediate physical danger to the child in returning home, and all extended family members are unavailable, unwilling, or unable to accept responsibility for temporary care and custody of the child.

**Secs. 7-2-307—7-2-320. Reserved.**

#### *PART VI. JUVENILE OFFENDER—DETENTION HEARING*

##### **Section 7-2-321. Requirement and purpose of detention hearing.**

Where a child who has been taken into custody is not released, a detention hearing shall be convened by the court within forty-eight (48) hours, exclusive of holidays and weekends, of the child's initial detention under article II, part V of this Code, except for children taken into custody under an arrest warrant.

- A. *Probable cause to detain child.* The purpose of the detention hearing is to determine:
- (1) Whether probable cause exists to believe the child committed the alleged juvenile offense(s); and
  - (2) Whether continued detention is necessary pending further proceedings.

- B. *Notice of detention hearing.* Notice of the detention hearing shall be given to the child and the child's parent, guardian or custodian and the child's counsel as soon as the time for the detention hearing has been set. The notice shall contain the name of the court, the title of the proceedings, a brief statement of the juvenile offense the child is alleged to have committed, and the date, time and place of the detention hearing.
- C. *Detention hearing procedure.* Detention hearings shall be conducted by the Children's Court separate from other proceedings. At the commencement of the detention hearing, the court shall notify the child and the child's parent, guardian or custodian of their rights under section 7-2-291 of this Code.
  - (1) *Evidence to be considered at detention hearing:* The court shall consider the evidence at the detention hearing as it pertains to the detention criteria set forth in Sections 7-2-304 and 7-2-305 of this Code. All relevant and material evidence helpful in determining the need for detention may be admitted by the judge, even though it would not be admissible in a hearing on the petition.
  - (2) *Finding at detention hearing:* The court shall issue an order stating the reasons for release or continued detention of the child. If the court determines that there is a need for continued detention, the court shall specify where the child is to be placed until the adjudicatory hearing.
- D. *Rehearing the detention matter.* If the child is not released at the detention hearing, and a parent, guardian or custodian or a relative was not notified of the hearing and did not appear or waive appearance at the hearing the court shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and a declaration stating the relevant facts.

**Secs. 7-2-322—7-2-330. Reserved.**

#### *PART VII. JUVENILE OFFENDER—INITIATION OF PROCEEDINGS*

##### **Section 7-2-331. Investigation by the juvenile probation officer.**

The juvenile probation officer shall make an investigation within twenty-four (24) hours of the detention hearing to determine whether the interests of the child and the public require that further action be taken. Upon the findings of their investigation, the juvenile probation officer shall:

1. Recommend that no further action be taken; or
2. Recommend to the child and the child's parent, guardian, or custodian that they appear for an informal adjustment conference (see section 7-2-332); or
3. Recommend to the juvenile prosecutor to transfer the juvenile matter to the Tribal Court proceedings; or
4. Recommend that the juvenile prosecutor file a petition to determine whether child is in violation of this Code or any other Pueblo of Laguna Code (see section 7-2-333). The

petition shall be filed within forty-eight (48) hours if the child is in custody. If the child has been previously released to their parent, guardian, custodian, relative, or responsible adult, the petition shall be filed within ten (10) days.

**Section 7-2-332. Informal adjustment conference by juvenile probation officer.**

A. *Preliminary investigation.* During the course of the preliminary investigation to determine what further action shall be taken, the juvenile probation officer shall confer with others, including the school, the child and the child's parent, guardian, or custodian, for the purpose of rendering adjustments or agreements that make the filing of the petition unnecessary. The juvenile probation officer shall consider the following factors in determining whether to proceed informally or to file a petition:

- (1) Nature and seriousness of the offense;
- (2) Previous number of contacts with the police, school truancy officials, juvenile probation officer or the court;
- (3) Age and maturity of the child;
- (4) Attitude of the child regarding the offense;
- (5) Willingness of the child to participate in a voluntary program;
- (6) Participation and input from the child's parent, guardian or custodian.

B. *Informal adjustment conference with parents and juvenile probation officer.* After conducting a preliminary investigation, the juvenile probation officer shall hold an informal adjustment conference with the child and the child's parent, guardian or custodian to discuss alternative courses of action in the particular case. The juvenile probation officer shall inform the child and parent, guardian or custodian of the following:

- (1) The juvenile probation officer shall inform the child, the child's parent, guardian or custodian of their basic rights under this Code.
- (2) Statements made by the child at the informal conference shall not be used against the child in determining the truth of the allegations in the petition.
- (3) The child shall be permitted to be represented by counsel at the informal conference.
- (4) Upon the basis of the information obtained during the preliminary investigation, the juvenile probation officer may enter into a written agreement with the child and the child's parent, guardian or custodian specifying particular conditions to be observed during an informal adjustment period, not to exceed six (6) months.
- (5) The child and the child's parent, guardian or custodian shall enter into the agreement with the knowledge that consent is voluntary and that they may terminate the adjustment process at any time and petition the court for a hearing in the case.
- (6) The child shall undergo any assessment (mental or physical or both) that is related to the charge that brought them before the Children's Court if they agree to an informal adjustment conference.

- (7) Upon the successful completion of the informal adjustment agreement, the case shall be closed and no further action taken in the case.
- (8) If the child fails to successfully complete the terms of the informal adjustment agreement, the juvenile probation officer may recommend that a petition be filed in the case under section 7-2-333.

C. *Child's right to deny informal adjustment conference.* If the child does not desire to participate voluntarily in an informal adjustment program, the juvenile probation officer shall recommend that the juvenile prosecutor file a petition under section 7-2-333 of this Code.

**Section 7-2-333. Filing and content of petition by juvenile prosecutor.**

Formal juvenile offender proceedings shall be instituted by a petition filed by the juvenile prosecutor on behalf of the Pueblo and in the interests of the child.

- A. *The petition for a juvenile delinquency hearing.* The petition shall be entitled, "In the matter of a child" and shall set forth with specificity:
  - (1) The name, birth date, residence and Tribal affiliation of the child;
  - (2) The names and residences of the child's parent(s), guardian(s) or custodian(s);
  - (3) A citation to the specific section(s) of this Code which give the court jurisdiction over the proceedings;
  - (4) A citation to the criminal statute or other law or ordinance which the child is alleged to have violated;
  - (5) A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred; and
  - (6) Whether the child is in custody and, if so, the place of detention and time the child was taken into custody.
- B. *Petition—Additional required allegations for school absence or truancy.* A petition alleging that a child is habitually and without justification truant, pursuant to the Pueblo of Laguna School Attendance and Truancy Ordinance (Ordinance No. 300-04) shall also allege the following:
  - (1) That the school and a child's parent, guardian or custodian have held a meeting or the child's parent, guardian or custodian has refused to attend a meeting to discuss the child's habitual and unjustified absence from school, pursuant to Section (6)(C)(2) of the Truancy Ordinance;
  - (2) That the school has provided an opportunity for counseling to determine whether a curriculum change would resolve the child's problem and if the local school board or governing authority of a private school provides an alternative education program, that the child has been provided with an opportunity to enroll in the alternative education program, pursuant to Section (6)(C)(3) of the Truancy Ordinance;

- (3) That the school has conducted a review of the child's educational status which may include medical, psychological, and/or educational testing of the child in accordance with the school regulations to determine whether learning problems may be a cause of the child's absence from school and, if so, what steps have been taken to overcome the learning problems;
- (4) That the school attendance liaison of the child's school has conducted an investigation to determine whether social problems may be a cause of the child's absence from school and, if so, that appropriate action has been taken; and
- (5) That the school has sought assistance, from appropriate agencies and resources available to the local school board or private school, or has taken all steps required for referral to the juvenile probation officer under the Truancy Ordinance.

**Section 7-2-334. Parental responsibility and jurisdiction over parents, guardian or custodian.**

In any petition alleging a juvenile offense, a parent, guardian or custodian of the child alleged to have committed a juvenile offense may be made a party in the petition. If a parent is made a party and if a child is adjudicated a juvenile offender, the court may order the parent, guardian or custodian to submit to counseling, participate in any probation or treatment program ordered by the court and if, the child is committed for detention, participate in any detention facility treatment or counseling program including attendance at the site of the detention facility. The court may order the parent, guardian or custodian to support the child committed for detention by paying the reasonable costs of support, maintenance and treatment of the child that the parent is financially able to pay.

**Section 7-2-335. Issuance of summons.**

A. *Court summons.* After a juvenile offender petition has been filed, the court shall direct the issuance of summons to the following:

- (1) The child or child's counsel;
- (2) The child's parent, guardian, or custodian;
- (3) Appropriate medical and/or alcohol rehabilitation counselors; and
- (4) Any other person the court deems necessary for the proceedings.

B. *Content of summons.* The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing. The summons shall also advise the parties of their applicable rights under article II, part IV. A copy of the petition shall be attached to the summons.

C. *Service of the summons.* The summons shall be served upon the parties at least five (5) days prior to the hearing. The summons shall be delivered personally by a peace officer or a court bailiff or appointee of the court. If the summons cannot be delivered personally, the court may deliver it by registered mail. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

**Secs. 7-2-336—7-2-350. Reserved.**

*PART VIII. JUVENILE OFFENDER—POST PETITION CONSENT DECREE*

**Section 7-2-351. Availability of consent decree.**

At any time after the filing of a juvenile offender petition, and before the entry of a judgment, the court may, on motion of the juvenile prosecutor or counsel for the child, suspend the proceedings and continue the child under supervision in their own home under terms and conditions negotiated with the juvenile probation officer and agreed to by all of the parties affected. The court's order continuing the child under supervision under this part shall be known as a consent decree.

**Section 7-2-352. Objection to consent decree.**

If the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the juvenile prosecutor after consultation with the juvenile probation officer, the court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

**Section 7-2-353. Duration of consent decree; extension.**

A consent decree shall remain in force and shall not exceed nine months; however, a child may be discharged sooner by the juvenile probation officer. Prior to the expiration of the consent decree period, and upon the motion of the juvenile probation officer or, the court may extend the decree for an additional three (3) months in the absence of objection to extension by the child. If the child objects to the extension, the court shall hold a hearing and make a determination on the issue of extension.

**Section 7-2-354. Failure to fulfill terms and conditions.**

If, either prior to a discharge by the juvenile probation officer or expiration of the consent decree, the child fails to fulfill the terms of the decree, the juvenile prosecutor may file a motion to revoke the consent decree. Proceedings on the motion shall be conducted according to this Code. If the child is found to have violated the terms of the consent decree, the court may:

- A. Extend the period of the consent decree; or
- B. Make any other disposition which would have been appropriate in the original proceeding.

**Section 7-2-355. New juvenile offense complaint.**

If either prior to discharge or expiration of the consent decree, a new juvenile offender complaint is filed against the child and the juvenile probation officer has conducted a preliminary inquiry and concurs with the juvenile prosecutor to file a petition upon a finding that informal adjustment is not in the best interest of the child and public, the juvenile prosecutor may:

- A. File a motion to revoke the consent decree in accordance with the section of this Code and file a complaint based on the charges that compelled the original consent decree; and/or
- B. File a petition on the basis of the new complaint which has been filed against the child.

**Section 7-2-356. Dismissal of petition.**

A child who is discharged by or who completes a period under supervision without reinstatement of the original juvenile offense petition, the Pueblo shall not file any proceedings against the child in any court for the same offense alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this section precludes a civil suit against the child for damages arising from this conduct.

**Secs. 7-2-357—7-2-370. Reserved.***PART IX. JUVENILE OFFENDER—ADJUDICATION PROCEEDINGS***Section 7-2-371. Purpose and conduct of adjudicatory hearing.**

Hearings on juvenile offender petitions shall be conducted by the Children's Court separate from other proceedings. The court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child has committed a juvenile offense. At the adjudicatory hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in article II, part IV of this Code.

**Section 7-2-372. Time limitations on adjudicatory hearings.**

If the child remains in custody, the adjudicatory hearing shall be held within ten (10) calendar days of receipt of the juvenile offender petition by the Children's Court. If the child is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within thirty (30) calendar days of receipt of the juvenile offender petition by the Children's Court.

**Section 7-2-373. Notice of hearing.**

Notice of the adjudicatory hearing shall be given to the child and the child's parent, guardian, custodian, the child's counsel, and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with this Code.

**Section 7-2-374. Denial of allegations.**

If the allegations in the juvenile offender petition are denied, the Children's Court shall set a hearing, in accordance, to hear evidence on the petition.

**Section 7-2-375. Admission of allegations.**

If the child admits the allegations of the petition, the Children's Court shall consider a disposition only after a finding that:

- A. The child fully understands their rights under article II, part IV of this Code, and fully understands the consequences of their admission;
- B. The child voluntarily, intelligently and knowingly admits all facts necessary to constitute a basis for Children's Court action; and
- C. The child has not, in their own statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations.

**Section 7-2-376. Juvenile offender finding after admission.**

If the court finds that the child has validly admitted the allegations contained in the petition, the court shall make and record its finding and schedule a disposition hearing in accordance with this Code. Additionally, the court shall specify in writing whether the child is to be continued in an out of home placement pending the disposition hearing or commence a detention hearing.

**Section 7-2-377. Juvenile offender finding after hearing.**

If the court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the court shall make and record its findings and schedule a disposition hearing in accordance with this Code. Additionally, the court shall specify in writing whether the child is to be continued in an out of home placement pending the disposition hearing or commence a detention hearing.

**Section 7-2-378. Dismissal of petition.**

If the court finds that the allegations on the juvenile offender petition have not been established beyond a reasonable doubt it shall dismiss the petition and order the child released from any detention imposed in connection with the proceeding.

**Secs. 7-2-379—7-2-390. Reserved.**



*PART X. JUVENILE OFFENDER—PREDISPOSITION STUDIES: REPORTS AND EXAMINATIONS*

**Section 7-2-391. Predisposition study and report.**

The court shall direct the juvenile probation officer to prepare a written predisposition study and report for the court concerning the child and their overall welfare, the child's family, environment and any other matter relevant to needed for any additional or continued treatment or other appropriate disposition of the case when:

- A. The child has been adjudicated as a juvenile offender; or
- B. A notice of intent to admit the allegations of the petition has been filed.

**Section 7-2-392. Contents of predisposition study and report.**

The report shall contain a specific plan for the child aimed at resolving the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan. Preference shall be given to the dispositional alternatives which are least restrictive of the child's freedom and are consistent with the interests of the community.

**Section 7-2-393. Medical assessment and treatment for alcohol or substance abuse.**

The Children's Court may order a medical assessment of a child arrested or detained for a juvenile offense relating to or involving alcohol or substance abuse to determine the mental or physical state of the child so that appropriate steps can be taken to protect the child's health and well-being.

**Section 7-2-394. Pre-adjudication examination of emotionally or developmentally disabled child.**

Where there are indications that the child may be emotionally disturbed or developmentally disabled, the court, on a motion by the juvenile prosecutor or that of the child, may order the child to be tested by a qualified psychiatrist, psychologist, or licensed psychometrician prior to a hearing on the merits of the petition. An examination made prior to the hearing, or as a part of the predisposition study and report, shall be conducted on an outpatient basis unless the court finds that placement in a hospital or other appropriate facility is necessary.

**Section 7-2-395. Predisposition examinations.**

The court may order an examination of a child adjudicated as a "juvenile offender" by a physician, psychiatrist or psychologist. The court may also, following the adjudicatory hearing, order the examination by a physician, psychiatrist or psychologist of a parent or custodian who gives their consent and whose ability to care for or supervise a child is an issue before the court at the dispositional hearing.

**Section 7-2-396. Transfer for diagnosis.**

The court may order that a child adjudicated as a juvenile offender be transferred to an appropriate facility for a period of not more than sixty (60) days for purposes of diagnosis with direction that the court be given a written report at the end of that period indicating the disposition which appears most suitable.

**Section 7-2-397. Submission of reports.**

Evaluations, assessments, dispositional reports and other material to be considered by the court in a juvenile hearing shall be submitted to the court and to the parties no later than three (3) days before the scheduled hearing date. A declaration including reasons why a report has not been completed shall be filed with the court no later than three (3) days before the scheduled hearing date if the report will not be submitted before the deadline. The court may in its discretion dismiss a petition if the necessary reports, evaluations or other material have not been submitted in a timely manner.

**Secs. 7-2-398—7-2-410. Reserved.*****PART XI. JUVENILE OFFENDER—DISPOSITION PROCEEDINGS*****Section 7-2-411. Purpose and conduct of disposition hearing.**

Disposition hearings shall be conducted by the Children's Court separate from other proceedings. The court shall conduct the disposition hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific juvenile offense. The court shall make and record its dispositional order in accordance with this part. At the disposition hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in article II, part IV of this Code.

**Section 7-2-412. Time limitations on disposition hearings.**

If the child remains in custody, the disposition hearing shall be held within ten (10) days after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within twenty (20) days after the adjudicatory hearing.

**Section 7-2-413. Notice of disposition hearing.**

Notice of the disposition hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel, and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with section 7-2-335 of this Code.

**Section 7-2-414. Evidence and reports.**

In the disposition hearing, the court may consider all relevant and material evidence determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent. The court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent, guardian, custodian, and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel, if any.

**Section 7-2-415. Disposition alternatives.**

If a child is found by the court to be a juvenile offender, the court may make and record any of the following orders of disposition for the child's supervision, care and rehabilitation:

- A. *Conditional release to parents, custodian or guardian.* Permit the child to remain with parent, guardian or custodian, subject to such conditions and limitations as the court may prescribe;
- B. *Conditional release to relative or suitable person.* Place the child in the legal custody of a relative or other suitable person, subject to such conditions of release and other provisions the court may order; order the child to pay restitution;
- C. *Conditional release under protective supervision.* Place the child under protective supervision under such conditions and limitations as the court may prescribe;
- D. *Conditional release to juvenile probation.* Place the child on probation under such conditions and limitations as the court may prescribe; or
- E. *Juvenile detention or juvenile in-patient treatment center.* Place the child in a juvenile facility designated by the court, including alcohol or substance abuse treatment center or behavioral health center, emergency foster home, foster home, group home, shelter home or secure juvenile detention facility.

**Secs. 7-2-416—7-2-430. Reserved.**

**PART XII. JUVENILE OFFENDER—REVIEW, MODIFICATION, REVOCATION,  
EXTENSION, OR TERMINATION OF DISPOSITIONAL ORDERS**

**Section 7-2-431. Mandatory review of disposition order.**

Dispositional orders are to be reviewed by the court at least once every six (6) months.

**Section 7-2-432. Modification, revocation or extension of disposition order.**

The court may hold a hearing to modify, revoke or extend a disposition order at any time upon the motion filed by any original party to the case or by the court's own motion.

**Section 7-2-433. Hearing to modify, revoke or extend disposition order.**

A hearing to modify, revoke or extend the disposition order shall be conducted in accordance with this part.

**Section 7-2-434. Automatic termination of disposition order.**

When the child reaches eighteen (18) years of age, all disposition orders shall automatically terminate, unless the original disposition order was made within one (1) year of the child's eighteenth (18th) birthday or after the child had reached 18 years of age, or the child is enrolled in high school, in which case the disposition order may not continue for more than one (1) year. The records concerning the child shall be destroyed according to this Ccode.

**Secs. 7-2-435—7-2-450. Reserved.***PART XIII. JUVENILE WELLNESS COURT; ALTERNATIVE SENTENCING (Reserved)***Secs. 7-2-451—7-2-470. Reserved.***PART XIV. JUVENILE RECORDS***Section 7-2-471. Children's Court records.**

A record of all hearings under this Code shall be made and preserved. All Children's Court records shall be confidential and shall not be open to inspection unless the child consent's through his counsel or parent, guardian or custodian or any other recognized party approved to speak on the child's behalf such as a guardian-ad-litem. Children's Court personnel directly involved in handling the case, will have access to juvenile court records for legitimate purposes.

**Section 7-2-472. Law enforcement records.**

Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement records shall be confidential and shall not be open to inspection unless the child consent's through his counsel or parent, guardian or custodian or any other recognized party approved to speak on the child's behalf such as a guardian-ad-litem. Children's Court personnel directly involved in handling the case, will have access to juvenile court records for legitimate purposes.

**Section 7-2-473. Destruction of records.**

When a child who has been the subject of any Children's Court proceeding reaches their eighteenth (18th) birthday, or the disposition order is terminated if the disposition order extends beyond their eighteenth (18th) birthday, the court shall order the Clerk of the Court to destroy both the law enforcement records and the Children's Court records. The Clerk of the Court shall respond to all records inquires as if no records had ever existed.

**Secs. 7-2-474—7-2-490. Reserved.**

*PART XV. APPEALS FROM DECISIONS UNDER JUVENILE JUSTICE CODE*

**Section 7-2-491. Who can appeal.**

Any party to a Children's Court hearing may appeal a final Children's Court order, including all transfer, adjudication and/or disposition orders except that the Pueblo of Laguna cannot appeal an adjudication order.

**Section 7-2-492. Time limit for appeal.**

Any party to appeal a final Children's Court order or disposition shall file a written notice of appeal with the court of appeals within thirty (30) calendar days of the final order or disposition.

**Section 7-2-493. Record.**

For purposes of appeal, a record of proceedings shall be made available to the child, their parent, guardian or custodian, and the child's counsel. Costs of obtaining this record shall be paid by the party seeking the appeal.

**Section 7-2-494. Stay of appeal.**

A final court order or disposition of a hearing may be stayed by such appeal upon a showing of good cause.

**Section 7-2-495. Conduct of proceedings.**

All appeals shall be conducted in accordance with the Pueblo of Laguna Law and Order Code and Tribal Court rules of procedure so long as those provisions are not in conflict with the provisions of this Code.

**Secs. 7-2-496—7-2-510. Reserved.**

*PART VXI. SEVERABILITY*

**Section [7-2-511. Severability.]**

If any clause, part or section of this Code shall be adjudged invalid such judgment shall not affect or invalidate the remainder of the Code.

**CHAPTER 3. MANDATORY SCHOOL ATTENDANCE****Section 7-3-1. Policy.**

The Pueblo of Laguna leadership will not ignore or tolerate excessive absenteeism and truancy in our schools. In establishing this school attendance chapter, the Pueblo recognizes its obligation to work with students and their parents to address school attendance concerns; to provide alternative resolutions where truancy exists; to establish a closer working relationship between the schools, parents, service providers, and the Pueblo; and to promote a fair, equal and impartial system that can effectively resolve truancy issues. The Pueblo also recognizes its obligation, through its schools, agencies and departments, to assist every single student to reach the goal of attaining an education.

**Section 7-3-2. Purpose.**

A. To provide a process whereby the Pueblo of Laguna may directly intervene to provide assistance to any child covered by this chapter.

B. To create a mechanism whereby the Pueblo of Laguna works cooperatively with schools and school districts that are located in whole or part on Pueblo of Laguna lands or who educate students covered by this chapter in order to improve the attendance and behavior of children covered by this chapter.

**Section 7-3-3. Coverage: Who is covered.**

This chapter and its provisions, shall apply to all enrolled members of the Pueblo of Laguna, to all members of recognized Indian Tribes who have significant ties to the Pueblo of Laguna, and to all students and their parents or guardians (to the extent not otherwise covered) who consent to be covered by the terms and conditions of this chapter and any cooperative agreement entered into with a school district.

**Section 7-3-4. Definitions.**

*Child* means an individual who is less than eighteen (18) years old.

*Habitual truant* means a student who has accumulated ten (10) or more unexcused absences per semester or twenty (20) days total for the school year.

*Home school* means the operation by a parent, guardian or other person having custody of a student who instructs a home-based instructional program that provides a basic academic educational program, including, but not limited to, reading, language arts, mathematics, social studies and science.

*Parent* includes natural or adoptive parents, or a person having legal custody of or having been appointed as the legal guardian of a child. This definition does not include persons whose parental rights have ceased pursuant to an order of the children's court, nor does it include the unwed father whose paternity, has not been acknowledged or adjudicated.

*School* shall include the following:

- (1) A state supported public school located within the Pueblo of Laguna;
- (2) A private school or extension program approved whether under the Pueblo of Laguna or state law;
- (3) Any schools established by the Pueblo of Laguna and administered by the Laguna Department of Education; or
- (4) A home-based instructional program that meets all of the necessary state requirements under NMSA, § 22-1-2.1(1978), as amended.

*School attendance officer* or *school resource officer* means that person that is hired, appointed or designated by school administration, to oversee the school attendance of students, and who is authorized to take certain actions when a student does become truant.

*School liaison* means a person that is designated by a school who shall serve as a liaison between the school and parents, the Pueblo Juvenile Probation Officer, Pueblo officials and the school boards as needed.

*Truant* means a student who stays out of school without permission, who accumulates a certain number of absences in violation of the school's attendance policy, or is found to have committed certain acts that put that student in violation of a school's truancy policy.

*Unexcused absence* means an absence for which no appropriate excuse has been provided by the student's parent or legal guardian.

#### **Section 7-3-5. School attendance mandatory.**

A. All children under eighteen (18) years of age and covered by this chapter are required to attend school for the full time when such school may be in session.

B. All parents of any child five (5) years of age and under eighteen (18) years of age and covered by this chapter shall cause such child to attend school as provided herein for the full time when such school may be in session.

C. A child and his or her parent shall be excused from the requirements of this chapter and shall not be subject to the penalties set out herein if:

- (1) The school attended by the child has excused such child from attendance because the child is physically or mentally unable to attend school and the school is providing all legally required services in a home-based or other approved program, is attending a residential school operated by the Pueblo, other Indian education agency or the department of social and health services, or has been temporarily excused upon the request of his or her parents for purposes agreed upon by the school authorities and parent. Such excused absences shall not be permitted if deemed to cause a serious adverse effect upon the student's educational progress.

- (2) The child is at least sixteen (16) years of age and if:
  - (a) The school attended by the child determines that such child has already attained a reasonable proficiency in the branches required by law to be taught in the first nine (9) grades of the schools as established by the Pueblo; or
  - (b) The child is regularly and lawfully engaged in a useful or remunerative occupation; or
  - (c) The child has already met graduation requirements in accordance with the standards set by the Pueblo of Laguna Department of Education, and approved by the appropriate boards of education; or
  - (d) The child has received a certificate of educational competence under roles and regulations established by the Pueblo of Laguna Department of Education, and approved by the appropriate boards of education; or
  - (e) The child has already met graduation requirements, if any, that are lawfully imposed by the Pueblo of Laguna and that preempt state requirements; or
  - (f) The child has been emancipated under the terms of the Pueblo of Laguna Children's Code.

**Section 7-3-6. School attendance liaison; duties.**

A. Every school that enrolls children five (5) years of age and older shall designate a school attendance liaison who shall serve as a liaison between the school and the parents, the juvenile probation officer, Pueblo officials and school boards as needed.

B. The school attendance liaison shall be responsible for notifying students and parents of unexcused absences in writing, arranging parent conferences with school officials, referring truants to the Pueblo Juvenile Probation Officer, and monitoring attendance of students who have signed intensive attendance.

C. Whenever a child is referred to a school attendance liaison, or whenever a parent of an enrolled child, or a Pueblo official informs a school attendance liaison that a child required to attend school fails to attend school without valid justification for three (3) days in a semester the liaison shall take the following actions:

- (1) Inform the child's parents by a notice in writing and by other means reasonably necessary to achieve notice of the fact that the child has failed to attend school for three (3) days in a semester, without valid justification;
- (2) Schedule a conference or conferences, within two (2) weeks from the date of the truancy notification, with the parents and child at a time and place reasonably convenient for all persons included, for the purpose of analyzing the causes of the child's absences;
- (3) Take steps, in coordination with the school, to eliminate or reduce the child's absences. These steps may include, where appropriate, adjusting the child's school program or school or course assignment, providing more individualized or remedial instruction,



preparing the child for employment with specific vocational courses or work experience, or both, and assisting the parent or student to obtain supplementary services that might eliminate or alleviate the cause or causes for the absence from school; and

- (4) Provide additional or continuing counseling for the parent(s) and child, and provide any other program that is reasonably designed to correct the attendance problems of the child, if deemed necessary, by the liaison.

D. If the child and/or parent fail to cooperate with the school attendance liaison in subsection 7-3-6C., the school attendance liaison shall refer the matter to the Pueblo Juvenile Probation Officer.

E. In any event, if the child has five (5) unexcused absences, the school attendance liaison shall refer the matter to the Pueblo Juvenile Probation Officer.

#### **Section 7-3-7. Pueblo Juvenile Probation Officer; duties.**

A. In those situations where a school attendance liaison refers a child and/or parent(s), to the juvenile probation officer, the probation [officer] shall develop a program, in cooperation with the school, designed to correct the behavior of the child, and may include the child, the parent and Pueblo officials.

- (1) The probation officer may contact the village officials of the village where the child and his or her parents are residents and request a family conference. In the family conference the village officials and other requested elders will counsel and advise the child and his or her parents regarding school attendance, in accord with their customary and traditional duties. This action may precede other actions considered under subsections B., C., D. and E., of this section.

B. Upon referral of a child and/or parent from the school attendance liaison, the juvenile probation officer shall inform all interested parties by notice in writing and by other means reasonably necessary to achieve notice of the fact, that the child has failed to attend school for five (5) days in a semester, without valid justification, or has failed to comply with measures taken under section 7-3-6, above.

C. The juvenile probation officer shall arrange or schedule a truancy conference with the child and his or her parent(s). At this conference, the probation officer shall explain that informal action will first be taken to have the child and the parent(s) be enrolled in a diversion program and that they shall enter into an intensive school attendance contract. The probation officer, in coordination with the school attendance liaison, will monitor the child to make sure he/she is fully complying with the conditions of the diversion program and the attendance contract. If the child and/or the parents successfully complete the program and fully adhere to the conditions of the attendance contract, the case will be closed out and no further action will be taken by the probation officer. The probation officer will also explain the consequences of noncompliance with this informal process.

D. In the event that the child and/or the parent(s) fail to fully comply with the terms of the attendance contract, or with the conditions of the diversion program, the juvenile probation officer may refer the matter to the Pueblo Prosecutor for further action.

E. In any event, if the child has ten (10) unexcused absences in a school year, the juvenile probation officer shall refer the matter to the Pueblo Prosecutor for the purpose of pursuing action against the child and/or the parent(s) for violations of this chapter.

**Section 7-3-8. Petition to children's court for violations by a parent or child.**

A. If action taken pursuant to sections 7-3-6 and 7-3-7 is not successful in substantially reducing a child's absences from school or if the parent(s) or child refuse to comply voluntarily, any of the following actions may be taken:

- (1) The juvenile probation officer, through the Pueblo Prosecutor or other appropriate personnel, may petition the children's court to assume jurisdiction for the purpose of alleging a violation of this chapter by the parent and/or child; or
- (2) A petition alleging a violation of this chapter by a child may be filed with the children's court by the parent of such child or by the juvenile probation officer through the Pueblo Prosecutor, or other appropriate personnel, at the request of the parent. If the court assumes jurisdiction in such an instance, the provisions of this chapter, except where otherwise stated, shall apply; or
- (3) The juvenile probation officer may also recommend to the Pueblo Prosecutor, or other appropriate personnel, that charges be filed under the Laguna Pueblo Law and Order Code (i.e., "Failure to Send Children to School or Criminal Neglect") in the Pueblo Criminal Court, or that charges under the Pueblo of Laguna Children's Code be filed in the children's court.

B. *Prosecuting attorney.* The Pueblo Prosecutor or other appropriate personnel, shall act as attorney for the complainant in all court proceedings relating to the compulsory attendance of children as required by this chapter, except for those petitions filed against any child by the parent without the assistance of the juvenile probation officer.

C. *Filing and content of petition.* Proceedings shall be initiated by a petition filed by the Pueblo Prosecutor, or other appropriate personnel, on behalf of the juvenile probation officer or by the parent(s) of the child. The petition shall be entitled, "In the Matter of (name of child)", and shall set forth with specificity the following:

- (1) The name, birth date, residence and Pueblo affiliation of the child;
- (2) A citation to the specific section(s) of this chapter which gives the court jurisdiction over the proceedings;
- (3) That the child is habitually truant and without justification absent from school;
- (4) That the school and a child's parent(s) have held a meeting or the child's parent(s) has/have refused to attend a meeting to discuss the child's habitual and unjustified absence from school;

- (5) That the school has provided an opportunity for counseling to determine whether a curriculum change would resolve the problem and, if the local school board or governing authority of a private school provides an alternative education program, that the child has been provided with an opportunity to enroll in the alternative program;
- (6) That the school has conducted a review of the child's educational status which may include medical, psychological and/or educational testing of the child in accordance with the school regulations to determine whether learning problems may be a cause of the child's absence from school and, if so, what steps have been taken to overcome the learning problems;
- (7) That the school attendance liaison of the child's school has conducted an investigation to determine whether social problems may be a cause of the child's absence from school and, if so, that appropriate action has been taken; and
- (8) That the school attendance liaison has referred the matter to the juvenile probation officer and the probation officer has taken appropriate measures under this chapter to eliminate the child's unexpected absences, without compliance by the child and/or the parent(s).

**Section 7-3-9. Penalties in general; defense; suspension of fine; complaints to court.**

A. Any student or parent found by the Pueblo Court to have violated or to be violating any of the provisions of this chapter shall be subject to diversionary action or fined not more than twenty-five dollars (\$25.00) for each day of unexcused absence from school. In addition, a child found to be in violation shall be required to attend school. Failure by a child to comply with an order issued under the section shall be punishable by a fine of twenty-five dollars (\$25.00) for each day that the child fails to comply. The court may order that the parent or the child, or both, comply with the program set out by the juvenile probation officer, in coordination with appropriate school officials and/or Pueblo officials, or as modified by the court.

B. It shall be a defense for a parent charged with violating this chapter to show that he or she exercised reasonable diligence in attempting to cause a child in his or her custody to attend school or that the child's school did not perform its duties as required under the law.

C. Any fine imposed pursuant to this section may be suspended upon the condition that a parent charged with violating this chapter shall participate with the Pueblo, the school and the child in a supervised plan for the child's attendance at school or upon condition that the parent attend a conference or counseling scheduled by the juvenile probation officer for the purpose of analyzing the causes of a child's absence, or on condition that the parent comply with any other plan determined to be appropriate to assist the child to attend school.

D. Where the court proceeding involves a child referred for discipline reasons, the court may suspend any fine imposed if the child agrees to comply with a plan developed by the juvenile probation officer, as it may be modified by the court.

E. Whenever the court orders the payment of a fine to enforce the provisions of this chapter, that fine shall be entered as a judgment of the court and may be collected as any judgment, including the withholding of any per capita payment, or part thereof until fully paid. Provided, that when a fine is imposed against a child who is not fully and gainfully employed, the fine shall only be collected by the withholding of the per capita if the child is eighteen (18) years old or older, or at the discretion of the court through the requirement of community service.

F. Any parent or child subject to this chapter who refuses to comply with the provisions of this section within a reasonable time after being ordered to comply by the court pursuant to an action initiated pursuant to section 7-3-8 shall be subject to the fines and penalties set out in section 15-9-6 of the Law and Order Code.

**Section 7-3-10. Reports by juvenile probation officer; compilation of information and reports.**

The juvenile probation officer shall report quarterly to the Laguna Pueblo Council on the petitions filed alleging a violation by a child under this chapter. The report shall at a minimum contain:

- (1) The number of petitions filed by a probation officer or by a parent;
- (2) The frequency of each action taken under this chapter to the filing of such petition;
- (3) Disposition of cases filed with the Pueblo Court, including the frequency of orders issued to enforce a court's order.

**Section 7-3-11. Confidentiality.**

All records, files and other documents that are kept by school officials and relate to a student's attendance, absence or truancy from school, and any records, files, and other documents associated with a court proceeding governed by this chapter shall be kept confidential in accordance with the existing school and court policies, unless otherwise released by order of the children's court. Such records, files or documents shall not be open to public inspection other than by court authorized personnel or by any person except for the following:

- (1) The child and/or his or her parents;
- (2) A legal guardian or legal custodian of the child;
- (3) School officials;
- (4) Village officials;
- (5) The probation officer; and
- (6) The Pueblo Prosecutor or other appropriate personnel and the child's attorney, if the child is being represented in any proceedings.

**Section 7-3-12. Use of other proceedings under Pueblo of Laguna law.**

The failure of a parent to comply with an order entered pursuant to this chapter may be grounds for court action in any action brought pursuant to the Pueblo of Laguna Law and Order Code (i.e., "Failure to Send Children to School or Criminal Neglect") in the Pueblo Court, or the Pueblo of Laguna Children's Court.

**CHAPTER 4. FAMILY PROTECTION—DOMESTIC VIOLENCE****Section 7-4-1. Purpose.**

A. By virtue of the Pueblo of Laguna's inherent authority as a sovereign nation and possession powers of local self-government pursuant to Article IV, Section 2(e) of the 1984 Constitution of the Pueblo of Laguna, this Family Protection Code is enacted for the purpose of setting forth the jurisdictional powers, duties and authorities of those persons and agencies entrusted with the responsibility of enforcement of this chapter, and to indicate which persons are subject to this chapter.

B. A core purpose of this chapter is to decrease the incidence of violent crimes occurring within the families and communities of the Pueblo of Laguna, and to strengthen and support healthy families by holding perpetrators of family violence accountable for their behavior.

**Section 7-4-2. Policy.**

It is hereby declared as a matter of Pueblo policy that the Pueblo of Laguna's response to domestic violence will be that such violent and damaging behavior is not to be tolerated, nor ignored. This chapter also recognizes the obligation of the Pueblo community, as a whole and through its various agencies and departments, to assist and protect individuals and families affected by domestic violence. To this end, the Family Protection Code seeks to guarantee to victims of domestic violence the maximum protection from abuse which the law can provide. Laguna Pueblo Council will review this chapter every five (5) years or when necessary to ensure that it is fully protecting victims of domestic violence.

**Section 7-4-3. Severability.**

If any clause, part, or section of this chapter shall be adjudged invalid such judgment shall not affect or invalidate the remainder of the Code.

**Section 7-4-4. Jurisdiction territory in domestic violence cases.**

A. By virtue of Article V, Section 3 of the Pueblo of Laguna's Constitution, the Pueblo has the right to exclude nonmembers as well as the inherent authority to protect its political integrity and provide for the welfare of its members and others who choose to live within its territory.

B. The territorial jurisdiction of the Pueblo of Laguna shall include all land within the exterior boundaries of the Pueblo of Laguna as defined under Article I, Section 1 of the Pueblo of Laguna's Constitution and Bylaws, and to the greatest extent permissible by law, such other lands as have been or may be added to the Reservation, whether held in trust by the United States for the Pueblo of Laguna or its members.

C. The jurisdiction of the Laguna Pueblo Court shall extend to all persons coming on or residing within the territorial jurisdiction of the Pueblo of Laguna as set forth above.

#### **Section 7-4-5. Definitions.**

The definitions in this section shall be liberally construed so as to protect all persons who are subjected to abuse and violence. As used in this chapter the following terms shall have the following meanings:

*Abuser, offender, perpetrator, respondent or defendant* means the person who engages in conduct defined as domestic abuse under this section, against any person defined as a victim under this section.

*Crime victim/witness specialist* works closely with the Pueblo Prosecutor, informs the victim or witness of the criminal process, and ensures that the victim or witness is connected to tribal and federal resources available to assist the victim or witness of a crime, including assisting the victim complete a petition for a protective order.

*Domestic abuse* does not mean a victim's act of self-defense made in reasonable response to an abuser's act of domestic violence.

*Domestic violence or abuse* means the occurrence of or any attempt to cause one (1) or more of the following acts by the perpetrator:

- (1) Any act that causes any bodily injury to or physical harm to another person;
- (2) Engaging in a course of conduct, physically or verbally, that is intended to cause a person to feel terrorized or seriously threatened that death, bodily harm, sexual assault, confinement or restraint may result;
- (3) Inflicting severe emotional distress through the use of threats, intimidation, or extreme ridicule to inflict humiliation and emotional suffering upon another person;
- (4) Causing another person to engage involuntarily in sexual activity by force, threat of force or duress;
- (5) Harassing or stalking another person through repeated actions or communications, by phone or by any other means, intended to intimidate, humiliate, shame, degrade or cause fear in another person;
- (6) Coercing a person through force, intimidation, threatening words, actions, or CI weapon to force a person to:
  - (a) Engage in conduct which the person has a right to abstain from; or
  - (b) Abstain from conduct which the person has a right to engage in.

- (7) Causing damage to property for the purpose of intimidating or attempting to control the behavior of another person; and
- (8) Engaging in any conduct that constitutes an offense under the Laguna Law and Order Code towards a person defined as a victim in this chapter.

*Domestic violence advocate*, also referred to as "Laguna Family Services Advocate", provides support to the victim through the provision of crisis intervention, emergency shelter, counseling and court advocacy, including assisting the victim complete a petition for a protective order.

*Domestic violence program for abusers* means a program which the Pueblo acknowledges as serving abusers by providing counseling, re-education classes, and other appropriate services.

*Domestic violence program for victims* means a program which the Pueblo acknowledges as serving victims of domestic abuse by providing advocacy, shelter, crisis intervention, counseling, education and other appropriate services.

*Minor* means any person who has not reached full legal age of eighteen (18) years old.

*Order of protection* means a Pueblo Court order granted for the protection of victims of domestic violence.

*Police officer* means any commissioned peace officer employed by the Laguna Police Department, or any other law enforcement peace officer, who is currently certified by a law enforcement academy and is responsible for the prevention and detention of crime within the jurisdiction of the Pueblo of Laguna. The term specifically includes criminal investigators and BIA officers, and specifically excludes village staff officers, Mayordomos and any members of any neighborhood watch program.

*Resident* means a member of the Pueblo of Laguna or any person living within the territorial jurisdiction of the Pueblo of Laguna regardless of whether they are a Pueblo member, a nonmember Indian, or a non-Indian.

*Victim* means any of the following persons who have been affected by domestic violence or abuse as defined in this section:

- (1) Any current or former family or household member of the abuser;
- (2) Any person involved in, or formerly involved in, an intimate relationship with the abuser, including:
  - (a) Persons who are current or former spouses or domestic partners;
  - (b) Persons who have a child, including an unborn child, in common;
  - (c) Persons who are living together or have lived together; and
  - (d) Persons who are involved or have been involved in a sexual or otherwise intimate, ongoing dating relationship including persons who are identified in the community as boyfriend and girlfriend regardless of age or sexual orientation.
- (3) Any children of a person in a relationship that is described herein;

- (4) Any person who is related by blood, or formerly related by law to the abuser by marriage as recognized by the Pueblo of Laguna.

*Weapon* means any firearm or deadly or dangerous instrument used or designed to be used by the abuser to threaten, intimidate, coerce, injure, harm or kill the victim.

**Section 7-4-6. Written policies and procedures.**

A. The Pueblo of Laguna Law and Order Code (title XV) shall be used to advance effective prosecution of the crime of domestic abuse and to maximize the protection and safety of the victims of domestic abuse and their children.

B. In cases involving domestic abuse, all Pueblo of Laguna departments and agencies shall follow the reporting procedures and case management procedures set forth in the Pueblo of Laguna Domestic Violence Policies and Procedures Manual.

**Section 7-4-7. Specific applicability.**

This section herein applies specifically to this chapter and takes precedence over any laws of general applicability.

**Section 7-4-8. Criminal procedures and penalties.**

*A. Crime of domestic violence or abuse.*

- (1) The purpose of this section is to clarify that domestic violence as defined in section 7-4-5, is a separate crime punishable separate and apart from the underlying crime, and that when the following crimes occur against the victim, a finding of such shall trigger the application of this chapter. The crime of domestic abuse occurs when an abuser commits one (1) or more of the following offenses against the victim:

- (a) Arson;
- (b) Assault offenses (battery, aggravated assault, simple assault, and intimidation);
- (c) Burglary, breaking and entering;
- (d) Destruction of property, damage, vandalism of property;
- (e) Homicide offenses (murder and nonnegligent manslaughter, negligent manslaughter, and justifiable homicide);
- (f) Kidnapping, abduction;
- (g) Sex offenses;
- (h) Stolen property offenses;
- (i) Weapon law violations;
- (j) Disorderly conduct;
- (k) Family offenses, nonviolent;
- (l) Stalking;



- (m) Real property;
  - (n) Intoxication;
  - (o) Harassment; and
  - (p) Offenses against children.
- (2) The commission of one of the crimes in subsection 7-4-8A. against any person described in section 7-4-5 shall trigger the application of this chapter. The crimes listed in subsection 7-4-8A., may be charged in addition to the charge of domestic violence or abuse.
- (3) The perpetrator's use of alcohol or any controlled substance in committing domestic violence, or any crime related to domestic violence, shall not diminish the seriousness of domestic violence and may be used to enhance any sentence ordered by the court. The fact that the perpetrator was under the influence at the time of the offense shall not be utilized by law enforcement, the prosecution, or the court to mitigate the severity of the violence.

*B. Rights of law enforcement officer; required notice to victim.*

- (1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect their self, the victim and others present from further violence. The law enforcement officer has a right to arrest upon finding probable cause to believe that domestic violence has occurred. A law enforcement officer need not obtain a search warrant in order to enter a residence where the officer has probable cause to believe a crime of domestic abuse is occurring or has just occurred, nor to seize property under this section.
- (2) Notice to the victim of his or her rights will be provided to the victim by the law enforcement officer verbally and in written form. If the victim's primary language is Keres, the statement will be provided in the victim's primary language whenever possible.

*C. Mandatory arrest for crimes involving domestic violence; determination of predominate aggressor.*

- (1) A police officer shall arrest any person, without a warrant whom the officer has probable cause to believe committed any crime involving domestic violence as defined in section 7-4-5, either in the presence of the officer or within twelve (12) hours of a report to law enforcement of the commission of such offense.
- (2) Regardless of the elements of any other crime committed in conjunction with the crime of domestic violence, the crime of domestic violence shall be considered a separate and distinct offense and may be charged in addition to any other crime.
- (3) If the law enforcement officer receives complaints of domestic violence from two (2) or more opposing persons, the officer shall evaluate each complaint separately to

determine who is the predominate aggressor. In determining whether a person is the predominate aggressor, the officer shall consider the totality of the circumstances, including but not limited to:

- (a) The degree to which one (1) of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or a third party.
  - (b) The prior history of domestic violence, both documented prior complaints and convictions including the law enforcement officer's own prior knowledge of the family.
  - (c) The relative severity of the injuries inflicted on each person, i.e. who in this relationship poses the most danger to the other?
  - (d) The likelihood of future injury to each person, i.e., who is at most risk of future harm?
  - (e) Whether one (1) of the persons acted in self-defense and/or in defense of others.
- (4) If the officer determines that one (1) person is the predominate aggressor, the officer need not arrest the other person alleged to have committed domestic violence. Dual arrests are discouraged in domestic violence situations but are not prohibited.
  - (5) The police officer is not required to make an arrest based on who assaulted who first but shall consider the dynamics of domestic violence and the definition of predominant aggressor in determining which party to arrest.

*D. Mandatory investigative report.*

- (1) Whenever a police officer investigates an allegation of domestic violence, whether or not an arrest is made, the officer shall make a written investigative report of the alleged abuse and submit that report to the office of the prosecutor, the village staff officer, the director of family services, and the director of social services, within forty-eight (48) hours.
- (2) This mandatory investigative report must contain at a minimum the following information:
  - (a) A description of the circumstances of the persons and their surrounding environment when the officer responded to the call;
  - (b) A description of the injuries or harm inflicted upon either or both parties and whether they received medical treatment;
  - (c) Summaries of the comments from the persons describing the circumstances leading to the call for law enforcement.

*E. Incident report.* In the event that a victim of domestic violence seeks help from a social service provider or Pueblo agency referenced in the Laguna Domestic Violence Policies and Procedure Manual, but does not report the incident to law enforcement, that service provider or Pueblo agency may submit an incident report to the Laguna Police Department or the office

of the prosecutor within seventy-two (72) hours. The service provider or Pueblo agency may give due consideration to the wishes of the victims and to issues of confidentiality unless there is an actual threat to the victim or a third party.

*F. Authority of police officers to seize weapons; procedure for return of seized weapons.*

- (1) *Seizure of firearms and weapons.* Incident to an arrest, or in the course of securing a crime scene involving domestic violence, a law enforcement officer:
  - (a) Shall seize all firearms and weapons that are alleged to have been involved or threatened to be used in the commission of the crime or any weapon in the immediate vicinity of the alleged commission of the offense.
  - (b) May seize a firearm and/or weapon that is in the plain view of the law enforcement officer or was discovered pursuant to a search conducted in accordance with the Pueblo of Laguna Law and Order Code. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to confiscation when officers conclude that the weapon must be confiscated to protect law enforcement, victims of domestic violence or others.
  - (c) When a firearm or weapon is seized, the officer shall issue a receipt/claim form for the firearm or weapon.
  - (d) Regardless of whether there is a conviction of the charge of domestic abuse, the Laguna Police Department may charge a fee for the storage of the seized weapons.
  - (e) All provisions of this section apply equally to police officers charged with the crime of domestic abuse.
- (2) *Return of firearms.*
  - (a) The court may order the return of the firearm if:
    - (i) The defendant is not convicted with the crime of domestic abuse; and
    - (ii) The defendant is not subject to any of the prohibitions in subsections 7-4-11A. and B.; and
    - (iii) The defendant can provide proof of ownership or the receipt/claim form for the firearm to the court.
  - (b) A firearm belonging to a third party, confiscated pursuant to subsection 7-4-8F.(1)(b), may be returned to the third party if the third party provides proper proof of ownership or the receipt/claim form issued by the Laguna Police Department under subsection 7-4-8F.(1)(c) to the court.
- (3) *Return of weapons.* The court may order the return of the weapon if the defendant is not charged with the crime of domestic abuse.

G. *Filing a criminal complaint for domestic abuse.*

- (1) A criminal complaint charging the crime of domestic abuse shall be signed by the police officer investigating the defendant for domestic abuse and by the Pueblo Prosecutor. If the defendant is not in custody at the time the complaint is charged, the police officer shall seek a warrant of arrest.
- (2) The Pueblo Prosecutor may file the criminal charge of domestic violence or abuse via criminal information upon receiving a report from a police officer or any other individual alleging domestic violence or abuse. The prosecutor will determine whether to seek a warrant of arrest or a summons to the individual so charged.

H. *Conditions of release.*

- (1) No person arrested for a crime of domestic violence or violation of an order for protection under this chapter shall be released from detention until after the expiration of seventy-two (72) hours from arrest, excluding weekends and holidays, notwithstanding the ability to post a cash bond or the failure of the prosecutor to file a criminal complaint.
- (2) In making a decision as to the pretrial release of a person who is arrested for or charged with a crime involving domestic violence or a violation of an order for protection, the court may ask for a pretrial investigation and, regardless of whether or not any such investigation report and recommendations are asked for, the court shall review the facts of arrest and detention of the person and determine whether the person:
  - (a) Is a threat to the alleged victim or family members;
  - (b) Is a threat to public safety; and
  - (c) Is reasonably likely to appear in court as ordered by the court.
- (3) The court may order the defendant to be held until trial; trial may be expedited.
- (4) The use or abuse of alcohol and/or other chemicals by the alleged perpetrator shall be considered, not only in relationship to the alleged assault but as alcohol and/or other chemicals relate to the alleged perpetrator's overall lifestyle, in the likelihood that alcohol and/or other chemicals greatly increases the likeliness or unlikeliness of a person to appear in court, potential for further deviant behavior, and enhances the possibility of further threats or injury to the victim or others.
- (5) The employment, economic, educational, social and political status of the alleged perpetrator shall not be considered in making a determination regarding release.
- (6) Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of an order for protection, the court shall make findings on the record, if possible, concerning the determination made in accordance with subsection

7-4-8H.(1) and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include, but are not limited to:

- (a) An order prohibiting the respondent from threatening to commit or committing acts of domestic violence against any person identified in section 7-4-5.
  - (b) An order prohibiting the respondent from harassing, intimidating, stalking, contacting, telephoning or otherwise communicating with the alleged victim, either directly or indirectly through family, relations by marriage, friends or co-workers.
  - (c) An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the court.
  - (d) An order prohibiting the respondent from possession or consumption of alcohol or controlled substances.
  - (e) An order directing possession and use of essential personal belongings, and directing Laguna Law Enforcement Officer to accompany or supervise the petitioner's or respondent's removal of personal belongings.
  - (f) An order mandating respondent to vacate the residence of the petitioner regardless of ownership.
  - (g) An order directing respondent to stay away from the residence, school, place of employment, or any place visited frequently by the petitioner or any person identified in section 103(4).
  - (h) An order directing respondent not to violate any laws in federal, state or tribal jurisdictions.
  - (i) An order determining temporary custody of any minor children.
  - (j) An order requiring regular supervision by the probation department until the trial date; and
  - (k) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the respondent in court.
- (7) If conditions of release are imposed, the court shall:
- (a) Issue a written order for conditional release.
  - (b) Immediately distribute a copy of the order to the defendant, victim, Pueblo Prosecutor, law enforcement, village staff officer, the director of family services, and the director of social services if children are involved.
  - (c) Provide law enforcement with any available information concerning the location of the perpetrator in a manner that protects the safety of the victim.

- (8) The clerk of court or jail shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
- (9) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions.
- (10) When a person who is arrested for or charged with a crime involving domestic violence or a violation of an order for protection is released from custody, or has escaped from custody, law enforcement, the office of the prosecutor and/or Laguna Family Services, shall:
  - (a) Use all reasonable means to immediately notify the victim of the alleged crime of the release; and
  - (b) Furnish the victim of the alleged crime at no cost an official copy of any conditions of release.
- (11) The address or physical location of the victim is confidential and law enforcement, the office of the prosecutor and the court are prohibited from divulging it.

I. *Criminal case may not be dismissed because civil compromise is reached.* A court shall not dismiss a criminal complaint charging domestic abuse for the sole reason that a civil compromise or settlement is reached.

J. *Penalties for crime of domestic abuse.*

- (1) *First offense.*
  - (a) A person convicted of domestic abuse may be subject to a term of imprisonment of not more than one (1) year, or a fine not to exceed five thousand dollars (\$5,000.00), or both or the maximum term and penalty allowed under federal law. If the defendant is incarcerated, the court may order the defendant to reimburse the Pueblo for the cost of his or her incarceration. Such reimbursement may be taken from the defendant's per capita distribution.
  - (b) The court may order any person found guilty of pleading guilty to a charge of domestic abuse to make appropriate reimbursement to the victim for expenses associated with domestic abuse, including, but not limited to, medical expenses and the repair or replacement of damaged property. The court may order that such reimbursement be paid from the defendant's per capita distribution.
- (2) *Subsequent charges.* When a defendant makes a judicial admission, pleads guilty to, or has been convicted of:
  - (a) A second crime involving domestic violence within a five-year period, the defendant will be subject to no less than fifty (50) percent of the maximum

imprisonment term for domestic violence, not including any fine that may be imposed or any order for reimbursement costs to the Pueblo described in subsection 7-4-8J.(1)(a); or

- (b) A third crime involving domestic violence within a five-year period, the defendant will be subject to no less than seventy-five (75) percent of the maximum imprisonment term for domestic violence, not including any fine that may be imposed or any order for reimbursement costs to the Pueblo described in subsection 7-4-8J.(1)(a), and may be turned over to federal authorities for prosecution.
- (c) This section shall apply to offenses committed after the enactment of this section, and any conviction of a crime of domestic violence in any other competent jurisdiction including the Pueblo of Laguna, committed before enactment of this section may be considered in determining whether the sentence should be enhanced.

*K. Probation.*

- (1) Before placing a perpetrator who is convicted of a crime involving domestic violence on probation, the court shall consider the safety and protection of the victim of domestic violence.
- (2) In the discretion of the court, any penalty ordered by the court pursuant to subsection 7-4-8J. above, may be suspended pending the completion of a recommended term of probation.
- (3) In lieu of the imposition of such confinement and/or fine as authorized under subsection 7-4-8J. above, the court may order a defendant convicted of the offense of domestic abuse to complete a term of probation and to comply with the conditions of that probation, including:
  - (a) Prohibit the respondent from threatening to commit or committing acts of domestic abuse against the petitioner or any designated family or household member;
  - (b) Prohibit the respondent from harassing, intimidating, stalking, contacting, telephoning or communicating with the alleged victim verbally or in writing, either directly or indirectly through family members, relations by marriage, friends, and co-workers;
  - (c) Prohibit the respondent from using or possessing a firearm or other weapon specified by the court;
  - (d) Direct the abuser to undergo a psychological evaluation, including an alcohol/chemical dependency test, and to comply with any resulting recommendation for counseling;
  - (e) Prohibit the respondent from possession or consumption of alcohol or controlled substances;

- (f) Require respondent to submit to alcohol or drug testing on a regular or random basis;
  - (g) Order possession and use of essential personal belongings, and direct the Pueblo Law Enforcement Officer to accompany or supervise the petitioner's or respondent's removal of personal belongings;
  - (h) Order respondent to vacate from the residence of the petitioner regardless of ownership;
  - (i) Order respondent to stay away from the residence, school, place of employment, or any place visited frequently by the petitioner and any other named family or household member;
  - (j) Order respondent to not violate any laws in any federal, state or Pueblo jurisdiction; and
  - (k) Order such other relief as it deems necessary to provide for the safety and welfare of the petitioner and person protected under section 7-4-5.
- (4) The court shall establish policies and procedures for responding to reports of nonattendance or noncompliance by a perpetrator with the conditions of probation imposed pursuant to subsection 7-4-8K.(3).
  - (5) The court shall order, as a condition of sentencing, that the convicted perpetrator be placed under supervised probation with the probation department for a minimum of two (2) years and for a term not to exceed five (5) years.
  - (6) The probation department shall document and report to the Pueblo Court any violations of law, any assault by the perpetrator, any threat of harm made by the perpetrator, and the perpetrator's failure to comply with any condition imposed by the court or probation department, regardless of where the violation occurred or under what jurisdiction the crime was adjudicated. Such a violation shall be deemed as constituting noncompliance with probation conditions. If a court finds a violation of probation conditions, the court can impose any remaining suspended sentence not served or up to thirty (30) days in jail for any one (1) violation of probation conditions or any other intermediate sanction within the discretion of the court.

*L. When a law enforcement officer or police department employee is the alleged offender or victim.*

- (1) When a law enforcement officer responds to a domestic violence call and finds that the alleged perpetrator or victim is a Laguna Police Department Officer or employee, the responding officer shall call his or her immediate supervisor to the scene as soon as reasonably possible.
- (2) When the alleged perpetrator or victim is of equal or higher rank than that of the responding supervisor, the responding supervisor shall contact an officer of higher rank than that of the alleged offender or victim.



- (3) If the responding officer has not yet made an arrest, it will be the responsibility of the responding supervisor to order the arrest of the alleged perpetrator if appropriate. The responding supervisor is also responsible for completing the offense report and for ensuring that the alleged perpetrator is processed, booked, and incarcerated.
- (4) In every incident, whether an arrest is made or not, the responding officer shall complete an incident report and forward a copy of the report to the chief of police and the Pueblo Prosecutor for review. A copy of the incident report and a memo requesting an internal affairs investigation will be sent to the Bureau of Indian Affairs.
- (5) The same procedures outlined above will be followed when dealing with non-Laguna Police Department Law Enforcement Officers with the exception of the notification of the internal affairs unit. Instead, the responding supervisor will be required to contact the highest ranking on-duty member of the department where the alleged offender or victim is employed and notify him or her of the incident.
- (6) All officers responding to a domestic violence incident involving a Laguna Police Department Officer or Employee shall submit a supplemental report to the initial reporting deputy/supervisor within twenty-four (24) hours.
- (7) When a Laguna Police Department Officer or employee is the alleged perpetrator, he or she will be placed on paid administrative leave pending the outcome of the internal affairs investigation. After formally being placed on administrative leave, or at the time of arrest, the officer or employee shall surrender all police property and equipment issued to him, including all firearms, weapons, and badges, pending the outcome of the internal affairs investigation.
- (8) In any situation where an arrest is appropriate, a law enforcement officer shall not fail to make the arrest and follow the procedures outlined in subsection 7-4-8B.
- (9) In any situation where an arrest is warranted, a law enforcement officer shall not give fellow Laguna Police Department Officers or employees special consideration or privileges.
- (10) Laguna Police Department Officers or employees who are being investigated for any allegation of domestic abuse shall not solicit special considerations or privileges from fellow LPD Officers or employees.

#### **Section 7-4-9. Civil orders of protection.**

##### ***A. Eligible petitioners.***

- (1) Any victim of domestic abuse may file a petition for an order of protection if either the petitioner or respondent, or both, are enrolled members of the Pueblo of Laguna, nonmember Indians, or non-Indians who are residents at the Pueblo of Laguna.

- (2) A parent, guardian, or other custodial representative may file a petition for an order for protection on behalf of a child or minor identified in section 7-4-5 or any person identified in section 7-4-5 may file on behalf of a child or minor identified in section 7-4-5 against a person who commits an act of domestic violence.

*B. Standard forms; clerical assistance; fee waivers.*

- (1) The Clerk of the Pueblo Court shall provide to a person requesting an order of protection a standard form for petitions for orders of protection.
- (2) The Clerk of the Pueblo Court shall provide clerical assistance in filling out the forms and filing the petition.
- (3) The victim may also obtain a standard form for a petition for a protective order and receive assistance in completing the form from the Laguna Family Services' Advocates or the office of the prosecutor.
- (4) Any fee required by the Pueblo of Laguna Pueblo Court for filing such civil petitions is waived based on the special need for the relief.

*C. Orders for protection; generally.* If a petition for an order of protection alleges a present danger of domestic abuse to petitioner, based on an allegation of a recent incident of actual abuse or threat of abuse, the court may:

- (1) Without a notice or hearing, immediately issue of an order of protection *ex parte*, granting all relief necessary to protect the petitioner as described in subsection 7-4-9D.
- (2) Upon notice, issue an order of protection or modify an order of protection after a hearing, whether or not the respondent appears.

*D. Temporary ex parte orders of protection.*

- (1) The court may issue a written protection order *ex parte* when a petitioner states to the court that they are in immediate danger of domestic abuse and the court finds reasonable grounds to believe the petitioner is in immediate danger.
- (2) The court may grant the following relief without notice and hearing in an order for protection issue *ex parte*:
  - (a) Prohibit the respondent from threatening to commit or committing acts of domestic abuse against the petitioner or any designated family or household member;
  - (b) Prohibit the respondent from harassing, intimidating, stalking, contacting, telephoning or communicating with the alleged victim verbally or in writing, either directly or indirectly through family members, relations by marriage, friends, and co-workers;
  - (c) Prohibit the respondent from using or possessing a firearm or other weapon specified by the court;
  - (d) Prohibit the respondent from possession or consumption of alcohol or controlled substances;

- (e) Order possession and use of essential personal belongings, and direct the Pueblo Law Enforcement Officer to accompany or supervise the petitioner's or respondent's removal of personal belongings;
  - (f) Order respondent to vacate from the residence of the petitioner regardless of ownership;
  - (g) Order respondent to stay away from the residence, school, place of employment, or any place visited frequently by the petitioner and any other named family or household member;
  - (h) Order respondent to not violate any laws in any federal, state or Pueblo jurisdiction;
  - (i) Determine temporary custody of any minor children; and
  - (j) Order such other relief as it deems necessary to provide for the safety and welfare of the petitioner and person protected under section 7-4-5.
- (3) An ex parte order of protection is effective until a hearing is held regarding the necessity for a permanent order of protection.
- (4) Upon issuance of an ex parte order of protection, the court shall:
- (a) Except as otherwise provided in subsection D.(2) above, if the court issues an order for protection ex parte and the court provides relief pursuant to subsection D.(2) above, the court shall set a date for a permanent order for protection hearing regarding the ex parte order for protection within ten (10) calendar days.
  - (b) Cause the ex parte order of protection, together with notice of hearing, to be served immediately on the respondent and petitioner by Laguna Law Enforcement or Court Bailiff.
  - (c) If personal service cannot be completed, the court shall notify the respondent by mail, at the last and best known address of the respondent and/or petitioner, of the date and time of the hearing for a permanent order for protection.
  - (d) If applicable, the respondent shall be served upon arraignment. The civil court clerk shall be responsible for forwarding a copy of the ex parte order to the jail for service.
  - (e) Make reasonable efforts to ensure that the order for protection is understood by the petitioner and the respondent, if present.
  - (f) Transmit, by the end of the next business day after the order is issued, a copy of the order for protection by the Laguna Law Enforcement, the Office of the Prosecutor, the Director of Laguna Family Services, and the Director of Social Services if a child is involved.
  - (g) Transmit a copy of the order to the appropriate entity for placement in the Pueblo Registry.

*E. Permanent order for protection; modification of orders; relief available after hearing; duties of the court; duration of order.*

- (1) If it appears from a petition for an order or a petition to modify an order for protection that domestic violence has occurred or a modification of an order for protection is required, the court may:
  - (a) Upon notice, issue an order for protection or modify an order after a hearing whether or not the respondent appears.
- (2) The court may grant the following relief in an order of protection after notice and hearing was given to the respondent, and whether or not the respondent appears:
  - (a) Grant the relief available in accordance with subsection 7-4-9D.(2);
  - (b) Specify arrangements for respondent's visitation of any minor child(ren) and, if necessary to protect the petitioner and the child(ren), require supervised visitation or deny visitation;
  - (c) In specifying all visitation arrangements, the court shall consider the respondent's overall lifestyle, especially as it pertains to alcohol and other chemical use;
  - (d) Order respondent to pay attorney's fees;
  - (e) Order the respondent to do any of the following that may apply:
    - (i) Pay rent or make payment on the mortgage on petitioner's residence;
    - (ii) Pay for the support of the petitioner and if the respondent is found to have a duty to support the petitioner;
    - (iii) Pay for the support of a minor child if the respondent is found to have a duty to support the minor child and/or reinforce any court ordered child support payments;
    - (iv) Reimburse the petitioner or other person for expenses associated with domestic abuse, including, but not limited to, medical expenses, counseling, the repair or replacement of damaged property, and the expense of any temporary housing; and
    - (v) Pay any other costs incurred in bringing the action.
  - (f) Order the petitioner to attend appropriate domestic abuse counseling; and
  - (g) Order respondent to attend domestic violence classes at the domestic violence program for abusers.
- (3) The court shall:
  - (a) Cause the order to be delivered to the Laguna Law Enforcement or Court Bailiff for service on the respondent;
  - (b) Make reasonable efforts to ensure that the order of protection is understood by the petitioner and respondent, if present; and

- (c) Transmit, by the end of the next business day after the order is issued, a copy of the order of protection to Laguna Law Enforcement, the Office of the Prosecutor, the Director of Family Services and the Director of Social Services if a child is involved.
- (4) The Pueblo Law Enforcement shall provide for expedited service of orders of protection.
- (5) Permanent orders of protection shall be effective for a minimum period of three (3) months. However, the court may, in its discretion, impose a longer period of time for the order to be effective.

*F. Service of permanent order of protection; duty of court when order for protection denied.*

- (1) Laguna Law Enforcement shall expedite service of permanent orders for protection. If the respondent is not able to be served in person after thirty (30) days, law enforcement shall notify the civil court clerk and the permanent order for protection shall be mailed to the last and best known address of the respondent.
- (2) Any person against whom a permanent order for protection is granted, and notice was sent to the last and best known address of the respondent, may petition the court to set aside the terms of that order for protection upon a showing by clear and convincing evidence that the respondent did not willingly and knowingly evade service and that there is a meritorious defense to the action. Upon such a showing, the court may grant another ex parte order to protect the petitioner and schedule a hearing within ten (10) days.
- (3) If a court denies a petition for an order for protection or a petition to modify an order for protection that is requested without notice to the respondent, the court shall inform the petitioner, in person or by mail, of his or her right to request a hearing upon notice to the respondent. The court record must reflect why the request was denied.

*G. Extension of order of protection.*

- (1) Prior to the expiration of an order of protection, the petitioner may apply for a modification to extend the time period for which the order of protection is effective.
- (2) The court may, in its discretion, issue an order of protection of indefinite duration, particularly if the victim has been subjected to domestic abuse which required hospitalization, which resulted in life threatening injuries, significant disfigurement, impairment, or disability.
- (3) If there has been no violation of the existing order prior to the application for extension, the court shall take this as an indication that the order of protection is effective in assuring the safety of the victim. The court may not use the fact that there has been no violation of the order of protection to determine that there is no further need for the order of protection.

H. *Effect of action by petitioner or respondent on order.*

- (1) If an order of protection requires a respondent to stay away from the residence of a petitioner or to stay away from the petitioner, an invitation by the petitioner does not invalidate the order of protection. It shall not be a defense to a charge of a violation of an order for protection under this section that the victim consented to the violation of the order of protection by encouraging contact. A violation of an order for protection shall be considered contempt of court.
- (2) In the event the petitioner and respondent should need to transfer property or custody of a child, Laguna Family Services or Laguna Social Services should be contacted for assistance with the transfer so as not to violate the protective order.
- (3) Any person granted a civil or criminal order of protection from the Laguna Pueblo Court or any other court of competent jurisdiction cannot be punished for a violation of that order for protection under this chapter.
- (4) An order of protection can only be dismissed by the Laguna Pueblo Court.
- (5) To request that an order of protection be dismissed, a petitioner must file a motion to dismiss an order of protection with the Pueblo Court. After a hearing, the court will decide whether or not to dismiss the order.
- (6) The court, in its discretion, may order the petitioner to pay twenty-five dollars (\$25.00) in court costs if the petitioner repeatedly files motions to dismiss the court's orders of protection.

I. *Violation of an order of protection.*

- (1) Violation of an order of protection issued pursuant to the Family Protection Code shall constitute civil contempt of court.
- (2) A law enforcement officer shall arrest without a warrant and take into custody any person who the officer has probable cause to believe has willfully violated an order issued pursuant to the Family Protection Code.
- (3) Violators shall be held for seventy-two (72) hours without bail in accordance to subsection 7-4-8H.(1).

J. *Time for filing.* In determining whether to grant an order of protection, the court shall consider whether the petitioner's fear is reasonable regardless of the lapse of time between the act of domestic abuse and the filing of the petition.

K. *Mutual orders of protection.* If it is clear to the court that both parties are at risk of physical injury, the court shall issue mutual protection orders against both parties.

L. *Continuing duty to inform court; other proceedings; omission of petitioner's address.*

- (1) At any hearing in a proceeding to obtain or amend an order of protection each party has a continuing duty to inform the court of any other civil proceedings whether in civil, family, or juvenile court, and each criminal case involving the parties.

- (2) An order of protection is in addition to other available civil or criminal proceedings. A petitioner is not barred from applying for an order of protection because of other court proceedings. The court shall not delay granting relief because of a pending action between the parties. The court shall not refuse to grant or dismiss an order of protection because of the possibility, pendency, or existence of other court proceedings.
- (3) A petitioner may omit their home address from all court papers, but the court shall maintain the address under sealed record, not to be accessible without petitioner's consent.

*M. Full faith and credit.*

- (1) A copy of an order for protection issued by another Tribal, state, county, or other court jurisdiction (hereinafter "foreign orders"), shall be given full faith and credit by Laguna Law Enforcement as having the same force and effect as one issued by the Laguna Pueblo Court.
- (2) Law enforcement officers shall attempt to verify the existence and/or validity of any foreign order for protection. In the event that the victim does not have a copy of the order, the officer cannot verify the order or the copy is not clear enough to determine its validity, the officer should arrest the subject on an applicable violation of the Family Protection Code and shall assist the victim in obtaining verification of the order and/or explaining the procedure for obtaining an order for protection. The law enforcement officer shall also offer other assistance as provided in subsection 7-4-8B.
- (3) Valid foreign orders for protection shall be upheld as to the conditions of the order whether or not those remedies or conditions are available through the Family Protection Code.
- (4) Violations of a foreign order for protection shall be acted upon in the same manner as if the order for protection were issued by Laguna Pueblo Court and in accordance with the Violence Against Women Act, 18 U.S.C. § 2265, et seq. (2007).
- (5) Law enforcement and criminal justice system personnel shall enter valid foreign orders for protection in the Pueblo Registry.
- (6) Law enforcement and criminal justice system personnel shall encourage persons possessing foreign orders for protection to file the foreign order with the Pueblo Registry.
- (7) Facsimile copies shall be recognized as valid.

**Section 7-4-10. Stalking.**

A. *Purpose.* The stalking provision of the Family Protection Code is construed to promote the following:

- (1) The active stalking of women and family members is a basic and often primary activity used by domestic violence offenders to establish, or re-establish, control over domestic violence victims. Through the perpetrator's pursuit, or following, of the victim, the risk

to the victim of being physically assaulted by the stalker is greatly increased. The goal of this section is in keeping with the overall purpose of the Family Protection Code is to provide safety and protection to victims, potential victims, and to set standards of behavior within the family that are consistent with traditional values of the Pueblo of Laguna.

B. *Definitions.* Unless the context otherwise requires, as used in the Family Protection Code:

- (1) *Credible threat* means a verbal or written threat, or a threat implied by a pattern of conduct, or combination of such verbal or written statements and conduct, either directly or through a third party, made with the intent to place the person who is the target of the threat in reasonable fear of their safety. The main standard for establishing a credible threat is the victim's perception of a threat to their safety. The second criteria will be the apparent ability of the defendant to carry out the threat, whether verbal, written, or implied through a willful pattern of conduct. The third standard is the ability to identify and relate a pattern of corroborated stalking behavior.
- (2) *Harass* means a knowing and willful pattern of conduct directed at a specific person, either directly or through a third party, which seriously alarms, annoys, torments or terrorizes the person, and which serves no legitimate purpose. Harassing behavior can include, but is not limited to:
  - (a) Vandalism;
  - (b) Annoying or threatening telephone calls;
  - (c) Following or other violations of an order for protection;
  - (d) Actual assaults;
  - (e) Sending unwanted letters;
  - (f) Sending unwanted messages or threats through third parties;
  - (g) Showing up at a victim's home or workplace;
  - (h) Attempting to obtain private information about the victim through others;
  - (i) Leaving gifts for the victim;
  - (j) Disabling or otherwise tampering with the victim's vehicle;
  - (k) Taking mail from the victim's mailbox;
  - (l) Entering the victim's home or place of residence whether the victim is there or not there;
  - (m) Parking near or driving by the victim's residence or workplace for no legitimate reason; and
  - (n) Using agencies or institutions that constitute a pattern of conduct consistent with retaliation by initiating investigations, restrictions or sanctions against the victim.



- (3) *Pattern of conduct* means conduct which has caused the victim to suffer emotional distress or fear. This course of conduct should contain a series of acts carried out by the defendant over a period of time, however short, which demonstrates a continuity of purpose (i.e., to annoy, harass, follow, etc.), and which would cause a reasonable person to suffer like emotional distress or fear.
- (4) *Family* means any spouse, parent, child, stepparent, stepchild, grandparent, grandchild, or significant other person or relative with whom the victim has a familial relationship, or who resides with the victim or any other relationship as defined in Family Protection Code, section 7-4-5.
- (5) *Corroborating stalking conduct* means any evidence of harassing behavior, physical evidence at the scene, records, documents, letters, unsubstantiated alibis, recorded messages, police reports, prior stalking convictions, witness information, or any other information, which would indicate a willful pattern of conduct or threat.

*C. Stalking; offense defined and penalties.*

- (1) Any person who, either directly or indirectly or through a third party, intentionally and repeatedly follows or harasses another person, and whose actions constitutes a credible threat with the intent to place that person in reasonable fear of their safety, or the immediate safety of their family, shall be deemed guilty of stalking under this section and the Family Protection Code. A person who makes a judicial admission of, pleads guilty to, or is found guilty of stalking shall be subject to a penalty of not less than thirty (30) and not more than sixty (60) days in jail, a fine not to exceed five hundred dollars (\$500.00), or both.
- (2) Whoever makes a judicial admission of, pleads guilty to, or is found guilty of a second or subsequent stalking offense, within a five-year period of the first offense, shall be subject to a penalty of not less than ninety (90) days in jail, a fine not to exceed five hundred dollars (\$500.00), or both.
- (3) A judicial admission, guilty plea, or conviction of a second or subsequent stalking offense, involving a credible threat to the same person, or in violation of a valid order for protection, shall be sentenced to a term of not less than six (6) months in jail, a fine not to exceed one thousand dollars (\$1,000.00), or both.
- (4) In addition to the penalties stated in subsections C.(1)—(3) above, any person making a judicial admission, pleads guilty or being found guilty of a violation of this section, will be required to attend and complete domestic violence classes, counseling sessions, and any other program the court deems necessary.

*D. Location of stalking perpetrator not bar to prosecution.*

- (1) The location of the threatening action by the perpetrator, either directly or through a third party, as corroborated through telephone records, postmarks, or order/delivery records, and/or witnesses as being outside the boundaries of the Pueblo of Laguna, will

not bar prosecution under this section. The act is considered to be a credible threat when full transmittal of the threat has been completed to the victim, when said victim is within the boundaries of the Pueblo of Laguna.

- (2) Corroborated initial or intervening acts, used to establish a pattern of conduct for the purpose of probable cause under this section, but which occurred outside the boundaries of the Pueblo of Laguna, may be used to establish and corroborate a pattern for prosecution of a violation under this section. However, initial or intervening acts occurring outside the boundaries of the Pueblo of Laguna are not prosecutable as separate offenses under this section.
- (3) The present incarceration of the person making the threat shall not bar prosecution under this section.

E. *Specific applicability.* The chapter herein applies specifically to the Family Protection Code and takes precedence over any laws of general applicability.

#### **Section 7-4-11. Firearms disqualification.**

A. *Purpose.* The purpose of this section is to prohibit any person from possessing a firearm who has been convicted of a felony or misdemeanor offense of domestic violence/abuse, as defined under section 7-4-5 of this Family Protection Code, or under Pueblo, state or federal law, including any person who is subject to an order of protection based upon a finding that the person represents a credible threat of violence to the victim, under Pueblo, state or federal law.

B. *Unlawful possession of a firearm.* It shall be unlawful for any person to possess a firearm who:

- (1) Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking or threatening any person defined in section 7-4-5, or engaging in any other conduct that would place any person defined in section 7-4-5 in reasonable fear of bodily injury, and provided that the order:
  - (a) Was issued after a hearing of which such person received actual notice and had the opportunity to participate;
  - (b) Includes a finding that such person represents a credible threat to the physical safety of such household or family member; or
  - (c) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such person defined in section 103(4).
- (2) Has been convicted in state, federal or Pueblo Court of any crime involving domestic violence/abuse, as defined in section 7-4-5 of this chapter, which involved the use or attempted use of physical force, or the threatened use of physical force; or the threatened use of a deadly weapon against any person defined in section 7-4-5.

C. *Violations.* Violation of this chapter shall result in a sentence of not less than one hundred twenty (120) days of mandatory jail, and a maximum fine of seven hundred fifty dollars (\$750.00). Any related domestic violence sentences for a violation of this section and any other section of the Family Protection Code shall be served consecutively.

## CHAPTER 5. ELDERLY

### Section 7-5-1. Policy of the Pueblo of Laguna.

It is the policy of the Pueblo of Laguna to continue the traditional respect the members of the Pueblo have always had for its elders. Elders are valuable resources to the Pueblo and custodians of Pueblo history, culture and tradition and they are the best hope of the Pueblo to pass on the Pueblo's history, culture, and tradition to future generations of the Pueblo. Thus, it is in the interest of and serves the welfare of the Pueblo to protect the elderly.

### Section 7-5-2. Purpose.

The purpose of this chapter is to protect the elderly from abuse and neglect, and this will be accomplished by the procedures set out herein and which will cover the areas of reporting, the receiving of reports, and which agencies will be responsible for investigating and providing services to the victims of abuse and neglect. The primary purpose of this chapter is to provide noncriminal procedures to assist elders who are considered to be at risk.

### Section 7-5-3. Savings clause.

If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of the Code.

### Section 7-5-4. Civil nature of Code.

A. This chapter is civil in nature and will not affect any applicable provisions of the Law and Order Code or the Family Protection Code, unless they are modified specifically by this chapter. When an agency determines that good cause exists to believe abuse or neglect is happening or has happened, the agency also needs to determine whether filing of criminal charges is necessary. A referral to the Pueblo Prosecutor's Office shall be made and the Pueblo Prosecutor will determine if criminal charges should be brought against the perpetrator.

B. If any criminal charges are going to be filed (e.g., assault, abuse, sexual abuse, domestic violence, etc.) the Pueblo's Law and Order Code or the Family Protection Code can provide the appropriate jurisdiction.

### Section 7-5-5. Definitions.

*Abuse* is the intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, or cruel punishment of an elder with resulting physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the elder such as a spouse, a child, or other relative recognized by the Pueblo law and custom, or a caretaker.

*Caretaker* means a person who is required by the Pueblo's law or customs and/or state law to provide services or resources to an elder; a person who has voluntarily undertaken to provide care or resources to the elderly; or an institution or agency which voluntarily provides or is required by the Pueblo law or customs (state or federal law, or tribal-state agreement) to provide services or resources to the elderly, including the duty to follow-up on placements, and any such institution or agency which receives anything of value in return for providing services or resources.

*Elder* is a person subject to the jurisdiction of the Pueblo who is at least sixty (60) years of age.

*Emergency* means a situation in which an elder is immediately at risk of death or injury and is unable to consent to services which would remove the risk.

*Emotional abuse* is any intentional infliction of threats, humiliation or intimidation.

*Exploitation* means the unauthorized or improper use of funds, finances, property, possessions, or other resources of an elder; or the unauthorized or improper use of the person of the elder by a caretaker or by any other person for personal gain or profit; or the failure to use the funds, property, or other resources of an elder to the elder's benefit or according to the elder's expressed desires.

*Good faith* means an honest belief or purpose and the lack of intent to defraud.

*Incapacity* means the current inability of a person to sufficiently understand, make and communicate responsible decisions about him or herself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or liquor, and to understand the consequences of any such decisions. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

*Least restrictive alternative* means an approach which allows an elder independence and freedom from intrusion consistent with the elder's needs by requiring that the least drastic method of intervention be used when intervention is necessary to protect the elder from harm.

*Neglect* means the failure of a caretaker to provide for the basic needs of an elder by deliberately or intentionally not supplying resources, services, or supervision necessary to maintain an elder's minimum physical and mental health and includes the inability of an elder to supply such basic needs for herself or himself. Neglect may include, but not be limited to any of the following:

- (1) Interfering with delivery of necessary services and resources;
- (2) Failing to provide services or resources essential to the elder's practice of his or her customs, traditions or religion;
- (3) Withholding medical care or medication and/or misuse of medication;
- (4) Withholding personal care;
- (5) Withholding basic needs, including, but not limited to, food, water, clothing, shelter, heat and attention;

- (6) Failure to provide for necessary supervision.

*Physical abuse* may include, but is not limited to, striking, hitting, shoving, shaking, beating, burning, biting or restraining (e.g., tying to a chair or bed or keeping a person locked in a room or closet).

*Protective placement* means the placement of an elder in a home, hospital, nursing home, residential care facility, or transfer of the elder from one such institution to another with the elder's consent or appropriate legal authority.

*Protective services* are services provided to an elder with the elder's consent or with appropriate legal authority and include, but are not limited to; social case work, psychiatric and health evaluation, home care, daycare, legal assistance, social services, health care, case management, guardianship and other services consistent with this chapter. It does not include protective placement.

*Psychological / verbal abuse* may include, but is not limited to:

- (1) Excessive yelling;
- (2) Insults;
- (3) Threats;
- (4) Forced social isolation, including, but not limited to silence;
- (5) Infantilization;
- (6) Forced babysitting.

*Retaliation* refers to the threatening of a reporter of elder abuse or the reporter's family in any way; causing bodily harm to the reporter or the reporter's family; causing the reporter or any of the reporter's family to be terminated, suspended from employment or reprimanded by an employer, or damaging the reporter's or the reporter's family's real or personal property or reputation in anyway.

*Sexual abuse* is any physical contact with an elder intended for sexual gratification of the person making such contact and which is not consented to by the elder, for which the consent is obtained by intimidation or fraud, or the elder is incapacitated and is therefore unable to consent.

#### **Section 7-5-6. Duty to report abuse and neglect of an elder.**

Suspected abuse or neglect of an elder shall be reported to the Pueblo Police Department and/or the social services department by:

- A. The elder's family or caretaker;
- B. Any Pueblo employee;
- C. Any Pueblo elected official;
- D. Any employee of a Pueblo-owned enterprise, even if not managed by the Pueblo;

- E. Indian Health Service Personnel;
- F. Bureau of Indian Affairs Personnel;
- G. Any medical or osteopathic doctor, coroner or medical examiner, chiropractor, podiatrist, dentist, religious practitioner, nurse, health aide, human services worker, elders' service provider, nursing home provider, the Laguna Rainbow Center, or any other health and elder or human service provider, or its employees who deliver services to Pueblo elders;
- H. Any person or agency or employee of such agency with a fiduciary duty to the elder such as a lawyer, accountant, financial institution or property manager;
- I. Any person who has good reason to suspect that an elder has been or is being abused or neglected.

**Section 7-5-7. Immunity for reporting.**

A person who in good faith reports suspected abuse or neglect of an elder is immune from any civil or criminal suit based on that person's report.

**Section 7-5-8. Failure to report; civil penalty; damages.**

Any person who is required by this chapter to report suspected elder abuse and fails to do so is subject to a civil penalty of up to five thousand dollars (\$5,000.00). The Pueblo Court shall assess the penalty only after petition, notice and opportunity for hearing, and a determination that the person had a duty to report, had good reason to suspect elder abuse or neglect, and failed to report as required by this chapter.

**Section 7-5-9. Bad faith report; civil penalty; damages.**

Any person who makes a report of suspected elder abuse knowing it to be false is subject to a civil penalty of up to five thousand dollars (\$5,000.00). The Pueblo Court shall assess the penalty only after petition, notice and opportunity for hearing, and a determination that the reporter made the report knowing it to be false.

**Section 7-5-10. Investigation of reported cases.**

A. The Laguna Pueblo Police Department and/or the social services department shall receive reports of elder abuse or neglect.

B. The Pueblo Police Department and/or the Laguna Social Services Department shall investigate the report within twenty-four (24) hours and within three (3) days prepare a written report of the investigation which shall include, at a minimum the information set out in subsection C. of this section as well as the results of interviews, observations and assessments and other fact findings. The investigator shall conduct in-person interviews with the elder, elder's family and caretaker, persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the elder's circum-

stances, and any other person the investigator believes has pertinent information. The existence and contents of medical records and other reports of abuse and neglect shall be ascertained. The investigator personally shall assess the elder's living conditions.

C. The investigative report shall contain, at a minimum, the following:

- (1) The elder's name, address or location, telephone number;
- (2) Name, address or location, telephone number of the person(s) or agency who is suspected of abusing or neglecting the elder;
- (3) The nature and degree of incapacity of the elder;
- (4) The full name, address or location, telephone number of any witnesses;
- (5) The full name, address or location, telephone number of the elder's caretaker;
- (6) A description of the acts which are complained of as abusive or neglectful; and
- (7) Any other information that the reporter believes might be helpful in establishing abuse or neglect.

D. The investigative report shall be filed with the social services department for permanent records and not be destroyed for a period of five (5) years. However, if the investigating agency determines that the investigative report was made in bad faith, the report shall be destroyed immediately after the investigation is completed if the evidence is insufficient to show abuse or neglect.

**Section 7-5-11. Rights of elders, their families and caretakers.**

A. An elder, the elder's family and caretaker shall be informed about an elder abuse investigation before it begins unless an emergency exists, in which case, they shall be informed as soon as possible, but no later than twenty-four (24) hours after the investigation begins.

B. An elder may refuse to accept elder protection services (even if there is good cause to believe that the elder has been or is being abused) provided that she/he is able to care for him or herself and has the capacity to understand the nature of the services offered.

C. The elder's family or caretaker may refuse for themselves, but not for the elder, elder protection services offered pursuant to this chapter.

D. An elder, the elder's family or caretaker may refuse to allow an investigator into their home and the investigator shall so inform the elder, the elder's family and caretaker of this right and the right of the investigator to seek a warrant before seeking entry.

E. The investigator and/or any law enforcement agency shall inform the elder's family and caretaker of their rights as allowed by the Indian Civil Rights Act, § 1301, et seq., whenever it appears that the investigation may lead to criminal charges being filed under the Pueblo's Law and Order Code.

F. The elder, elder's family and caretaker shall be served with a petition filed pursuant to this chapter.

G. The elder, elder's family and caretaker have the right to attend any proceeding pertaining to the determination of the elder's capacity and the elder shall be present at all proceedings unless the Pueblo Court determines the elder's health would be at risk at such proceeding.

H. The elder, elder's family and caretaker have the right to be represented by counsel, or traditional representative of their choice at all proceedings at their own expense.

I. The elder, elder's family and caretaker have the right to seek independent medical, psychological or psychiatric evaluation of the elder at their own expense.

**Section 7-5-12. Filing of petition; hearing.**

A. The social services department shall file petitions and present facts on behalf of the Pueblo as petitioner for legal proceedings authorized or required by this chapter.

B. A hearing on a petition authorized or required by this chapter shall be conducted with the purpose of protecting the elder where necessary and to the extent shown by the facts and using the least restrictive alternatives. All rights as set out specifically in this chapter and in the Indian Civil Rights Act shall be enforced strictly during proceedings. No hearing shall be held unless notice has been given to the elder and other interested parties, including the elder's family and caretaker. The elder and all other interested parties shall have the right and opportunity to be heard fully and to present evidence. The Pueblo Court shall issue written findings in support of any order allowed by this chapter.

C. The Pueblo Court, providing this chapter does not conflict with customary and traditional laws; shall determine whether an elder is incapacitated and the degree of incapacity, and, where necessary, whether elder abuse or neglect has occurred. The determination shall be made only after petition, notice, hearing, opportunity to be heard, and proof that is clear and convincing.

**Section 7-5-13. Elder protection order; time limits.**

A. If the Pueblo Court determines that an elder is incapacitated and abused or neglected, the court shall issue an elder protection order which provides appropriate protection for the elder. Such protection may include, but is not limited to the following:

- (1) Removing the elder from the place where the abuse or neglect has taken or is taking place for no longer than sixty (60) days;
- (2) Removing the person who has abused or neglected an elder from the elder's home;
- (3) Restraining the person who has abused or neglected an elder from continuing such acts;
- (4) Requiring an elder's family or caretaker or any other person with a fiduciary duty to the elder to account for the elder's funds and property;
- (5) Requiring any person who has abused or neglected an elder to pay restitution to the elder for damages resulting from that person's wrongdoing;



- (6) Appointing a representative (guardian ad litem) for the elder;
- (7) Recommending that a representative payee be named;
- (8) Ordering protective services or protective placement; and
- (9) Ordering the social services department to prepare a plan for and deliver elder protection services which provide the least restrictive alternatives for services, care, treatment, or placement consistent with the elder's needs.

B. No protection order shall be issued until ten (10) days after the petition is served on all parties, except for an emergency protection order.

C. An elder protection order shall be issued for a period not to exceed one hundred twenty (120) days.

D. The order may be extended as many times as necessary to protect the elder, but only after a petition is filed by the party seeking an extension and notice, opportunity for hearing, and a determination based on clear and convincing proof that such an extension is necessary for the protection of the elder. Each extension shall be for a period not to exceed one hundred twenty (120) days.

**Section 7-5-14. Elder protective services and elder protective placement; other services, evaluation procedure; duty to pay.**

A. Protective services or protective placement are provided either on a voluntarily or involuntary basis.

- (1) Such services or placement may be provided on a voluntary basis by the social services department when requested by any abused or neglected elder and the elder is found to be in need of such services or placement.
- (2) Such services or placement shall be provided on an involuntary basis by the agency if the Pueblo Court determines they are necessary. Such services or placement may be provided on an emergency basis or, if necessary, on a permanent basis through a guardian ad litem appointed pursuant to Pueblo law and shall be provided in a manner least restrictive of the elder's liberty and rights consistent with the elder's welfare and needs. The Pueblo Court's determination of the degree of incapacity, if any, as well as whether elder abuse or neglect has occurred is the standard the social services department shall use to develop a plan for the delivery of elder protection services.

B. Voluntary protective services or protective placement are provided subject to available appropriation and resources and only as determined necessary by the social services department. If the elder's consent to such services or placement is withdrawn, they shall cease.

C. Involuntary protective services or protective placement shall be provided to any elder who is incapacitated or who is abused or neglected and incapacitated and only upon Pueblo Court order as required by this chapter.

D. Services as determined necessary by the social services department may be delivered to the elder's family or caretaker in order to protect the elder.

E. The social services department shall establish a process for conducting a comprehensive, physical, mental and social assessment/evaluation or study of an elder when a petition for a elder protection order has been filed.

F. The elder, and where appropriate, the elder's family or caretaker shall be informed by the social services department of rights as allowed under this chapter and other Pueblo laws.

**Section 7-5-15. Emergency protective orders.**

A. The Pueblo Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon the filing of a petition supported by clear and convincing evidence that an elder is incapacitated and cannot consent to protective services and an emergency exists.

B. The emergency protection order shall:

- (1) Set out the specific emergency services to be provided to the elder to remove the conditions creating the emergency;
- (2) Provide only those services which will remove the emergency;
- (3) Allow protective placement only if the evidence shows that it is necessary;
- (4) Designates the social services department, Pueblo Police, a family member, the village officials or others required to implement the order;
- (5) Be issued for a maximum of seventy-two (72) hours and may be renewed once for a maximum of seventy-two (72) hours provided the evidence shows that the emergency is continuing.

C. The Pueblo Court may authorize forcible entry by law enforcement officers to enforce the emergency protection order after it has been shown that attempts to gain voluntary access to the elder have failed.

D. The petition for an emergency protection order shall contain the full name, address or location and interest of the petitioner; the full name, address or location, and condition of the elder; the nature of the emergency; the nature of the elder's incapacity; the proposed protective services, and where applicable, protective placement; the attempts, if any to secure the elder's consent to services; and any other facts the petitioner believes will assist the court.

E. The emergency protection order shall be issued after notice accompanied by a copy of the petition has been given to the elder, his family and caretaker at least twenty-four (24) hours before a hearing on the petition is scheduled and the Pueblo Court has had the opportunity to hear all parties and the evidence. The Pueblo Court may waive the waiting period if the emergency is such that the elder will suffer immediate and irreparable harm and reasonable attempts have been made to notify the parties.

F. The Pueblo Court, providing that customary and traditional law has been followed, shall hold a hearing on a petition to provide protective services or placement to an elder within seventy-two (72) hours after an emergency protection order is issued.

G. An emergency protection order can be set aside by the Pueblo Court upon a petition of any party showing good cause.

H. If there is good cause to believe that an emergency exists and that an elder is at risk of immediate and irreparable physical harm and, based on personal observation, an investigator or any law enforcement officer, believes that the elder will be irreparably harmed during the time an emergency protection order is secured, the investigator or any law enforcement officer shall immediately protect the elder, including, where necessary, transporting the elder for medical treatment or to an appropriate facility. Immediately after the elder is protected, a petition for an emergency protection order shall be filed and the procedures set out in this section will be followed.

I. Any person who acts in good faith pursuant to this section is immune from any civil or criminal suit based on that person's actions.

**Section 7-5-16. Confidentiality of reporter, records, hearings; penalty for not complying with confidentiality.**

A. The name of a reporter who reports abuse or neglect as required by this chapter is confidential and shall not be released to any person unless the reporter makes an informed consent to the release of such information.

B. A proceeding held pursuant to this chapter shall be closed and confidential. Persons who may attend are the elder, the elder's family and caretaker, the person or representative of an institution or agency accused of elder abuse, the representative of the social services department, necessary Pueblo Court officials and attorneys or representatives for the parties. Other persons may appear only to testify. No one attending or testifying at such a proceeding shall reveal information about the proceeding unless ordered to do so by Pueblo Court order.

C. Records of an investigation of elder abuse or of a Pueblo Court hearing regarding elder abuse are confidential. Such records shall be open only to the elder, and law enforcement officers, coroner or medical examiner who has reason to believe that an elder died as a result of abuse or neglect, and any other person who the Pueblo Court determines by written court order has specific need to have access to such record(s).

D. Any person who violates any subsection of this section shall be subject to a civil penalty of up to five thousand dollars (\$5,000.00) per occurrence and the penalty shall be assessed by the Pueblo Court after petition, notice, opportunity to be heard, and a determination that a violation occurred.

**Section 7-5-17. Interference with investigation and retaliation prohibited; civil penalty.**

A. No person shall interfere intentionally with a lawful investigation of suspected elder abuse or neglect.

B. No person shall retaliate by any means against any person who has made a good faith report of suspected elder abuse or neglect or who cooperated with an investigation of suspected elder abuse or neglect.

C. Any person who violates subsections A. and B. above, shall be enjoined from such activity and shall be subject to a civil penalty of up to five thousand dollars (\$5,000.00) per occurrence. The penalty shall be assessed by the Pueblo Court only after petition, notice, the opportunity to be heard, and a determination that either interference or retaliation as set out in this section occurred.

**Section 7-5-18. Privileged communication.**

No evidentiary privilege except for the attorney-client or priest-penitent privilege may be raised as a justifiable defense or reason for failing to report suspected elder abuse or neglect or for testifying as required by this chapter.

**Section 7-5-19. Referral for criminal investigation.**

A report of suspected elder abuse or neglect shall be referred to the appropriate law enforcement agency if the investigation indicates that a criminal act has been committed. The investigation and other procedures allowed by this chapter shall continue thereafter if the circumstances so warrant.

**Section 7-5-20. Deferring criminal prosecution.**

Criminal prosecution of any person accused of elder abuse or neglect may be deferred or dismissed provided that:

- A. The elder, the elder's family, caretaker and the accused agree to resolve conflicts either through counseling, mediation or other Pueblo recognized dispute resolution process;
- B. All parties concerned agree to accept services determined by the judge to be necessary;
- C. The crime is not of a serious nature involving significant, intentional bodily injury or intentional property damage in excess of five hundred dollars (\$500.00); and
- D. The accused person does not have a prior record of related criminal offenses.

**Section 7-5-21. Full faith and credit.**

Any order of protection issued pursuant to due process of law by a court of any other jurisdiction, state or Pueblo, shall be accorded full faith and credit by the Pueblo of Laguna Pueblo Court and enforced as if it were an order of that court.

**CHAPTER 6. DOMESTIC RELATIONS****Section 7-6-1. Validation of marriages.**

All marriages performed and/or consummated prior to May 1, 1968, between Indians subject to the jurisdiction of this Code, whether according to state law, church ceremony, or tribal custom, are hereby validated from their inception.

**Section 7-6-2. Reserved.****Section 7-6-3. Marriage.**

A. All marriages after May 1, 1968, shall be performed and consummated in accordance with the laws of the State of New Mexico or other state or country. Hereafter, Indian custom marriage shall not be recognized.

B. Marriage is a personal relation arising out of civil contract, to which the consent of the parties capable of making it is necessary. Consents alone will not constitute marriage, it must be followed by a solemnization. A marriage may be solemnized by a recognized clergyman or other official duly authorized to perform the marriage ceremony under the laws of the State of New Mexico, or under the laws of any other state or country. All marriages shall be recorded in the Office of the Pueblo Secretary.

**Section 7-6-4. Separate maintenance.**

It is the policy of the Pueblo of Laguna that the Laguna Pueblo Court shall not have jurisdiction to grant divorces or annulments. However, the Pueblo Court shall have jurisdiction to enter orders respecting the division of property, support of minors and custody of minors.

**Section 7-6-5. Duties of husband.**

Among other responsibilities, a man who marries a woman with children from a previous marriage has the responsibility of supporting said children during their minority in cases where their natural father is unable to do so.

**CHAPTER 7. PROBATE PROCEEDINGS****Section 7-7-1. Disposition of the assets of a deceased member.**

A. Disposition of the assets of a deceased Indian living within the Pueblo shall be made in accordance with the last will and testament left by said deceased person, if he or she executed a last will and testament. All last wills and testaments shall be signed by the person in his lifetime, he or she being of sound and disposing mind, before two witnesses to said last will and testament. The said last will and testament should also be signed by the two (2) attesting witnesses. Provided, that no provision in a will shall be valid if it violates a custom of the Pueblo of Laguna.

B. In the absence of a last will and testament, the property of said decedent shall be distributed in accordance with the provisions of section 7-6-2 hereof.

**Section 7-7-2. Probate jurisdiction.**

The Pueblo Court shall conduct all probate proceedings for members of the Pueblo living within the Pueblo Lands and concerning property inside the Pueblo Lands owned by any member. The jurisdiction of the Pueblo Court shall not apply to trust lands or other trust property held by deceased persons which fall under the jurisdiction of the Secretary of the Interior.

**Section 7-7-3. Probate procedure.**

A. Probate proceedings, with or without a will, shall be commenced by the filing of the petition by the next-of-kin with the Pueblo Court. Said petition should have annexed to it the will left by the decedent, if there is a will. The next of kin who files the petition or some other qualified person, shall be named administrator, who may be required to post a reasonable bond. The petition shall contain the names of all of the heirs of said decedent, and the names of the creditors of said decedent, if known.

B. A filing fee shall accompany the filing of the petition with the clerk.

C. Upon receipt of said petition by the Pueblo Court Clerk, the said clerk shall notify each one of the heirs and the creditors listed in said petition of the date on which determination of heirship and determination of claims due creditors shall be made by the Pueblo Court. Said date shall be not less than sixty (60) days nor more than one hundred twenty (120) days from the date of the filing of the petition to probate.

D. On the date set for the hearing, the Pueblo Court shall proceed to determine the heirs of the estate of the decedent, the creditors of said decedent and the amounts due each, and shall order payment to creditors of decedent of the amounts due each creditor; it shall thereafter, from the balance left in the estate of decedent, order a distribution of the assets of the estate among the heirs of the decedent. All claims of creditors shall be in writing made under oath.

**Section 7-7-4. Heirship.**

For the purpose of determining heirship, in the absence of a last will and testament, distribution of the assets of the deceased shall be made as follows:

- A. To the surviving spouse, if the deceased was a married person, in its entirety;
- B. If the deceased left no surviving spouse, to the children of the deceased, share and share alike;
- C. If the deceased left no surviving spouse or children, then to the father and mother of the deceased, or the survivor of them;

- D. If the deceased left no surviving spouse, nor surviving children, nor surviving parents, then to the brothers and sisters of the decedent, share and share alike;
- E. In the event the deceased left no heirs, the assets of the deceased shall escheat to the Pueblo of Laguna.

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## CHILDREN, FAMILIES AND ELDERLY

### TITLE VII HISTORY

**Title VII, Chapter 1, Children**, was enacted by Resolution No. 05-03, adopted on February 11, 2003 rescinding any conflicting prior resolution or ordinance. Resolution No. 05-03 was amended by Resolution No. 10-07 adopted on March 27, 2007, Amending Pueblo of Laguna Children's Code by removing Criminal Code violations from Children's Court.

#### **Resolution 10-07 reads as follows:**

WHEREAS, the Pueblo of Laguna ("Pueblo") is a federally recognized Indian Tribe with a constitution and all the inherent governmental powers of a sovereign; and

WHEREAS, pursuant to Article IV of the Constitution, the Tribal Council is authorized to exercise the inherent powers of the Pueblo; and

WHEREAS, the Pueblo of Laguna Constitution, Article IV, section 2(e) authorizes the Tribal Council to enact "ordinances governing the conduct and civil relations of residents of the Pueblo and providing for the maintenance of law and order and the administration of justice within the lands of the Pueblo"; and

WHEREAS, by Resolution No. 05-03, adopted on February 11, 2003, the Tribal Council adopted a Children's Code which established a Children's Court whose jurisdiction was intended to focus on "abuse, neglect and dependency" issues affecting the Pueblo's children and families at Part 11, section 1; and

WHEREAS, the Children's Code granted to the Children's Court the original, exclusive jurisdiction over all matters relating to "Any child who engages in behavior that would otherwise constitute a violation of the Pueblo of Laguna Criminal Code"; and

WHEREAS, the Children's Code did not establish court procedures for adjudicating any alleged violations of the Criminal Code by juveniles; and

WHEREAS, the Legislative Council desires to ensure that there is a judicial forum to address all violations of the Pueblo's Criminal Code including those committed by the Pueblo's juveniles; and

WHEREAS, the Pueblo is undertaking the development of a comprehensive juvenile code that will be ready for presentation to the Tribal Council in the near future; and

WHEREAS, the Tribal Council wants to ensure that pending submission of a comprehensive juvenile code, the Tribal Court has the necessary jurisdiction to adjudicate cases involving juveniles who allegedly violate the Pueblo of Laguna Criminal Code; and

WHEREAS, the Tribal Council has reviewed the legislation which follows and understands it to be temporary in nature until such time as the Tribal Council adopts a comprehensive juvenile code at which time Tribal Council will act to repeal this legislation.

PUEBLO OF LAGUNA CODE

NOW, THEREFORE, BE IT RESOLVED that the Pueblo of Laguna Children's Code, adopted in 2003 by Resolution No. 05-03 is hereby amended as follows:

1. The jurisdiction of the Children's Court is amended at Part 11, Section 2(B) by deleting section 2(B)(3).
2. The jurisdiction of the Children's Court is further amended at Part 11, Section 2 by adding a new section 2(E) as follows:

2(E). Notwithstanding anything in this Code, the Children's Court shall not have exclusive jurisdiction over matters relating to children who engage in behavior that would otherwise constitute a violation of the Pueblo of Laguna Criminal Code. Such cases may be adjudicated in the Tribal Courts of the Pueblo of Laguna pursuant to the Criminal Code and the child subject to the Criminal Procedures Code and any other pertinent Pueblo of Laguna laws, processes and procedures.

BE IT FURTHER RESOLVED that the Governor is directed to work with the legal advisors, departments, courts, personnel, and Pueblo Officials with expertise in juvenile, criminal and traditional matters to develop a comprehensive Juvenile Justice Code for presentation Council as soon as possible.

**Resolution No. 05-03 reads as follows:**

WHEREAS, the Pueblo of Laguna through its customs and traditions and Constitution has inherent authority and responsibility for the well being of its children; and

WHEREAS, the Pueblo of Laguna Council has determined that it is necessary to establish policies and procedures to protect the interest of its children, families and the community through a code; and

WHEREAS, the Pueblo of Laguna Council desires to foster cooperative intergovernmental relations with regard to the welfare of children and families;

NOW, THEREFORE, BE IT RESOVLED that the Pueblo of Laguna Council hereby adopts the Children's Code; and

BE IT FURTHER RESOLVED, that the Pueblo of Laguna Council hereby rescinds any resolution or ordinance, in part or in whole, in direct conflict with the Children's Code herein adopted. [TEXT OF CODE]

**Title VII, Chapter 3, Mandatory School Attendance**, was enacted by Resolution 63-04 on December 22, 2004, adopting Ordinance No. 300-04. Ordinance 300-04 rescinds any conflicting prior resolution or ordinance.

**Resolution No. 63-04 reads as follows:**

WHEREAS, the Pueblo of Laguna through its customs and traditions and Constitution has inherent authority and responsibility for the well being of its children and families; and

## CHILDREN, FAMILIES AND ELDERLY

WHEREAS, the Pueblo of Laguna Council has determined that it is necessary to establish policies and procedures to protect the interest of its children, families and the community; and that it has an obligation, through its schools, agencies and departments, to assist every single student to reach his or her goal of attaining an education; and

WHEREAS, the Pueblo of Laguna Council leadership has become aware of the need to establish a School Attendance and Truancy Ordinance to address an high incidence of truancy in schools located on Pueblo Lands; and

WHEREAS, Pueblo of Laguna service providers and school officials have been unable to fully address issues of truancy with the current provisions in the Pueblo of Laguna Criminal Code alone, and thus have expressed the need for a Truancy Ordinance addressed at students and parents.

NOW, THEREFORE, BE IT RESOLVED that the Pueblo of Laguna Council hereby adopts the School Attendance and Truancy Ordinance.

BE IT FURTHER RESOLVED, that the Pueblo of Laguna Council hereby rescinds any resolution or ordinance, in part or in whole, in direct conflict with the School Attendance and Truancy Ordinance herein adopted. [TEXT OF ORDINANCE]

**Title VII, Chapter 4, Family Protection - Domestic Violence**, was adopted by Resolution No. 33-98 on June 16, 1998. Resolution No. 33-98 was repealed in its entirety by Resolution No. 33-07, which adopted the Family Protection Code of 2007 (Code No. 100-98) on August 14, 2007.

### **Resolution 33-98 reads as follows:**

WHEREAS, Indian Pueblo Legal Services received a Violence Against Women Act (VAWA) grant to help certain Tribes in New Mexico address the problem of domestic violence; and

WHEREAS, the purpose of the Indian Pueblo Legal Services' VAWA project was to draft an effective and useable Pueblo Domestic Violence Code, and such code to serve as a model that other Pueblos can adapt and use in their own communities; and

WHEREAS, the Pueblo of Laguna was chosen by Indian Pueblo Legal Services to be one of the Pueblos that they would work cooperatively with to develop a Domestic Violence Code; and

WHEREAS, by virtue of its inherent authority as a sovereign nation and possessing powers of local self-government, the Pueblo of Laguna has developed a "Family Protection Code" which sets forth the jurisdictional powers, duties and authorities of those persons and agencies entrusted with the responsibility for enforcing the Code, and also states which persons are subject to the Code; and

WHEREAS, it is hereby declared as a matter of Pueblo policy that the Pueblo of Laguna's response to domestic violence will be that such violent and damaging behavior is not to be tolerated nor ignored.

NOW, THEREFORE, BE IT RESOLVED that the Laguna Pueblo Council hereby adopts the "Family Protection Code" for the Pueblo of Laguna. [TEXT OF CODE]

## PUEBLO OF LAGUNA CODE

### **Resolution No. 33-07 reads as follows:**

WHEREAS, The Pueblo of Laguna Pueblo Council under Article IV Section 2(e) of the Constitution has the authority to establish laws that govern the conduct and civil relations of the residents of the Pueblo of Laguna; and

WHEREAS, The Violence Against Women's Act (VAWA), 18 U.S.C. §§ 2265 et seq. (2004) was recently reauthorized in 2005 with provisions that directly impact Indian Country including the Pueblo of Laguna; and

WHEREAS, the Laguna Family Protection Code passed under Resolution No. 33-98 in 1998, does not include a comprehensive approach necessary to handle domestic abuse cases with the new VAWA provisions; and

WHEREAS, a new Family Protection Code has been authored to include a more comprehensive approach in both criminal and civil proceedings and includes the VAWA provisions that directly impact the Pueblo of Laguna; and

WHEREAS, the new Family Protection Code of 2007 establishes a comprehensive procedure for the Pueblo of Laguna to protect the victims of Domestic Abuse regardless of whether the incident occurred within the Pueblo.

NOW, THEREFORE, BE IT RESOLVED that the Pueblo of Laguna hereby enacts the Family Protection Code of 2007 effective immediately upon Governor's signature and repeals in its entirety the Code previously passed under Resolution No. 33-98 (1998); and

BE IT FURTHER RESOLVED that the Office of the Prosecutor is charged with forming a committee to compose and implement the Family Protection Code Policies and Procedures Manual to accompany the new Family Protection Code of 2007 for related Pueblo programs and the Laguna Police Department to follow by December 1, 2007. [TEXT OF CODE]

**Title VII, Chapter 5, Elderly**, was adopted by Resolution No. 75-92 on December 23, 1992.

### **Resolution No. 75-92 reads as follows:**

WHEREAS, the Pueblo of Laguna Pueblo Council under Article V, Section 2 of the Laguna Constitution has the power to promote and protect the public health and the welfare of its members and to administer aid for those in need; and

WHEREAS, Laguna elders are a precious resource of the Pueblo and deserve its respect and protection; and

WHEREAS, Laguna elders may be isolated both geographically and emotionally, and physically unable to care for themselves; and

WHEREAS, economic deprivation and family dysfunction without necessary support services and respite care may result in the neglect or abuse of elders; and

WHEREAS, the Pueblo of Laguna has an interest in educating its members on the prevention of elder neglect and abuse and for creating services and programs to assist families in meeting the needs of elders; and

## CHILDREN, FAMILIES AND ELDERLY

WHEREAS, an Elderly Abuse Committee was formed in 1991 to address the needs of elderly who may be neglected or abused and on July 21, 1992 the Pueblo of Laguna Pueblo Council officially sanctioned the creation of an Elderly Abuse Committee; and

WHEREAS, the Elderly Abuse Committee has recommended a code that addresses prevention of elder abuse, education of the community to the problems of the elderly, and of the delivery of necessary services to the elderly consistent with customary and traditional law.

NOW, THEREFORE, BE IT RESOLVED that the Pueblo of Laguna Pueblo Council hereby adopts the Elderly Abuse Code as recommended by the Elderly Abuse Committee. [TEXT OF ORDINANCE]

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